Montana Legislative History

Chapter: 430 Session L: 2023
Bill Number: 165 Senate

Checklist of Bill History

History and Final Status Sheet ☑
Introduced Bill ☑
Fiscal Note ☐
Third Reading Bill ☐
Final Version of Bill ☐

House	Senate
Committee: Business & Labor	Committee: Business, Labor, & Economic Affairs
Hearing Date(s): 04/04/2023	Hearing Date(s): 02/02/2023
Committee Report: 04/05/2023	Committee Report: 02/10/2023

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: S.K. Marshall

Date: 01/11/2024

Notes:

Bill Draft Number: LC0490
Bill Type - Number: SB 165
Short Title: Establishing a duty of cooperation relating to insurance policies
Primary Sponsor: Barry Usher (R) SD 20
Chapter Number: 430

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 46

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/04/2023			
(S) Signed by Governor	05/04/2023			
(S) Transmitted to Governor	05/01/2023			
(H) Signed by Speaker	04/29/2023			
(S) Signed by President	04/20/2023			
(C) Printed - Enrolled Version Available	04/18/2023			
(S) Returned from Enrolling	04/18/2023			
(S) Sent to Enrolling	04/13/2023			
(H) Returned to Senate	04/12/2023			
(H) 3rd Reading Concurred	04/12/2023	82	16	
(H) Scheduled for 3rd Reading	04/12/2023			
(H) 2nd Reading Concurred	04/07/2023	83	15	
(H) Scheduled for 2nd Reading	04/07/2023			
(H) Committee Report--Bill Concurred	04/05/2023			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred	04/05/2023	18	1	(H) Business and Labor
(H) Hearing	04/04/2023			(H) Business and Labor
(H) First Reading	03/14/2023			
(H) Referred to Committee	03/13/2023			(H) Business and Labor
(S) Transmitted to House	02/17/2023			
(S) 3rd Reading Passed	02/16/2023	34	14	
(S) Scheduled for 3rd Reading	02/16/2023			
(S) 2nd Reading Passed	02/15/2023	34	16	
(S) Scheduled for 2nd Reading	02/15/2023			
(C) Printed - New Version Available	02/13/2023			
(S) Committee Report--Bill Passed as Amended	02/13/2023			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Passed as Amended	02/10/2023	7	3	(S) Business, Labor, and Economic Affairs
(C) Amendments Available	02/02/2023			
(S) Hearing	02/02/2023			(S) Business, Labor, and Economic Affairs

(S) First Reading	01/13/2023	
(S) Referred to Committee	01/12/2023	(S) Business, Labor, and Economic Affairs
(C) Introduced Bill Text Available Electronically	01/12/2023	
(S) Introduced	01/11/2023	
(C) Draft Delivered to Requester	01/11/2023	
(C) Draft Ready for Delivery	01/10/2023	
(C) Executive Director Final Review	01/09/2023	
(C) Draft Ready for Delivery	01/09/2023	
(C) Draft in Assembly	01/07/2023	
(C) Executive Director Review	01/07/2023	
(C) Bill Draft Text Available Electronically	01/04/2023	
(C) Draft in Final Drafter Review	01/04/2023	
(C) Draft in Input/Proofing	01/03/2023	
(C) Draft to Drafter - Edit Review	12/29/2022	
(C) Draft in Edit	12/28/2022	
(C) Draft in Legal Review	12/28/2022	
(C) Draft to Requester for Review	12/28/2022	
(C) Draft Request Received	09/20/2022	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Usher	Barry
Drafter	Walker	Jameson
Primary Sponsor	Usher	Barry

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Insurance		Simple	INS

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number: 430
DEADLINE
Category: General Bills
Transmittal Date: 03/03/2023
Return (with 2nd house amendments) Date: 04/18/2023

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	04-MAY-23	

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: “AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate insurance claims based on reasonably available and supporting documents, records, and information regarding

the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against an insured, insurer, or both, or reported or delivered to an insurer under an insurance policy issued by the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported or delivered to an insurer under an insurance policy issued by the insurer.

(3) A breach of any of the duties of an insured or claimant set forth in this section does not create a separate or independent cause of action against an insured or claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or claimant under 33-18-242 or commenced by an insured or claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence otherwise admissible in a civil action in the state regarding the actions, inactions, and other conduct of an insured or claimant in a civil action commenced by an insured or claimant with respect to a claim or cause of action under 33-18-242 or commenced by an insured or claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or

stored in a media format that is reasonably available to an insured or claimant and that relates to, establishes, or proves:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.

(c) "Insured" means an insured individual or entity insured under an insurance policy against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an insured individual or entity making, alleging, or pursuing a claim or cause of action arising from or related in any manner to the insurance policy issued by the insurer to the insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may

bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: “AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate insurance claims based on reasonably available and supporting documents, records, and information regarding

the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a THIRD-PARTY claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against ~~an~~ THE insured, THE insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ TO the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a THIRD-PARTY claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ TO the insurer.

(3) A breach of any of the duties of an insured or A THIRD-PARTY claimant set forth in this section does not create a separate or independent cause of action BY AN INSURER against an insured or A THIRD-PARTY claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or A THIRD-PARTY claimant under 33-18-242 FOR AN INSURER'S ALLEGED VIOLATION OF 33-18-201(4), (5), OR (6), or commenced by an insured or A THIRD-PARTY claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence ~~otherwise admissible~~ in a civil action ~~in the state~~ regarding the actions, inactions, and other conduct of an insured or A THIRD-PARTY claimant in a civil action commenced by an insured or A THIRD-PARTY claimant with respect to a claim or cause of action under 33-18-242 FOR AN INSURER'S ALLEGED VIOLATION OF 33-18-201(4), (5), OR (6), or commenced by an insured or A THIRD-PARTY claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good

faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or A THIRD-PARTY claimant and that relates to, establishes, ~~or~~ proves, OR MAY TEND TO ESTABLISH OR PROVE:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

~~(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.~~

~~(c)~~(B) "Insured" means an ~~insured~~ individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an ~~insured~~ individual or entity making, alleging, or pursuing a claim or cause of action ~~arising from or related in any manner to~~ FOR WHICH COVERAGE MAY BE PROVIDED BY the insurance policy issued by the insurer to the ~~insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured~~ INDIVIDUAL OR ENTITY.

(C) "THIRD-PARTY CLAIMANT" MEANS A THIRD PARTY MAKING, ALLEGING, OR PURSUING AN INSURANCE CLAIM OR CAUSE OF ACTION AGAINST AN INSURED FOR DAMAGES, OR AGAINST AN INSURER PURSUANT TO 33-18-242. FOR PURPOSES OF THIS DEFINITION, THE TERM ALSO MEANS AN ATTORNEY OR ANY OTHER AUTHORIZED REPRESENTATIVE ACTING FOR OR ON BEHALF OF THE THIRD-PARTY CLAIMANT OR ANY ASSIGNEE OF THE THIRD-PARTY CLAIMANT.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action AGAINST THE INSURER for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Insured and third-party claimant's duties -- affirmative defense. (1) An insured or a third-party claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against the insured, the insurer, or both, or reported to the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a third-party claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported to the insurer.

(3) A breach of any of the duties of an insured or a third-party claimant set forth in this section does not create a separate or independent cause of action by an insurer against an insured or a third-party claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or a third-party claimant under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5), or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence in a civil action regarding the actions, inactions, and other conduct of an insured or a third-party claimant in a civil action commenced by an insured or a third-party claimant with respect to a claim or cause of action under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5), or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or a third-party claimant and that relates to, establishes, proves, or may tend to establish or prove:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

(b) "Insured" means an individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an individual or entity making, alleging, or pursuing a claim or cause of action for which coverage may be provided by the insurance policy issued by the insurer to the individual or entity.

(c) "Third-party claimant" means a third party making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242. For purposes of this definition, the term also means an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of the third-party claimant.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may

bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

SB 165, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2023.

_____

Speaker of the House

Signed this _____day

of_____, 2023.

SENATE BILL NO. 165

INTRODUCED BY B. USHER

AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: “AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against an insured, insurer, or both, or reported or delivered to an insurer under an insurance policy issued by the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported or delivered to an insurer under an insurance policy issued by the insurer.

(3) A breach of any of the duties of an insured or claimant set forth in this section does not create a separate or independent cause of action against an insured or claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or claimant under 33-18-242 alleging a violation of 33-18-201(4), (5), (6), or (13), or commenced by an insured or claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence otherwise admissible in a civil action in the state regarding the actions, inactions, and other conduct of an insured or claimant in a civil action commenced by an insured or claimant with respect to a claim or cause of action under 33-18-242 or commenced by an insured or claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good

faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or claimant and that relates to, establishes, or proves:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.

(c) "Insured" means an insured individual or entity insured under an insurance policy against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an insured individual or entity making, alleging, or pursuing a claim or cause of action arising from or related in any manner to the insurance policy issued by the insurer to the insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's

violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

AMEND

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: “AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against an insured, insurer, or both, or reported or delivered to an insurer under an insurance policy issued by the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported or delivered to an insurer under an insurance policy issued by the insurer.

(3) A breach of any of the duties of an insured or claimant set forth in this section does not create a separate or independent cause of action against an insured or claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or claimant under 33-18-242 alleging a violation of 33-18-201(4), (5), (6), or (13), or commenced by an insured or claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence otherwise admissible in a civil action in the state regarding the actions, inactions, and other conduct of an insured or claimant in a civil action commenced by an insured or claimant with respect to a claim or cause of action under 33-18-242 or commenced by an insured or claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good

faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or claimant and that relates to, establishes, or proves:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.

(c) "Insured" means an insured individual or entity insured under an insurance policy against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an insured individual or entity making, alleging, or pursuing a claim or cause of action arising from or related in any manner to the insurance policy issued by the insurer to the insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's

violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a third-party claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against ~~an~~ the insured, the insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ to the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a third-party claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ to the insurer.

(3) A breach of any of the duties of an insured or a third-party claimant set forth in this section does not create a separate or independent cause of action by an insurer against an insured or a third-party claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or a third-party claimant under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5) or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence ~~otherwise admissible~~ in a civil action ~~in the state~~ regarding the actions, inactions, and other conduct of an insured or a third-party claimant in a civil action commenced by an insured or a third-party claimant with respect to a claim or cause of action under 33-18-242

for an insurer's alleged violation of 33-18-201(4), (5) or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or a third-party claimant and that relates to, establishes, ~~or~~ proves, or may tend to establish or prove:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

~~(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.~~

~~(c)~~(b) "Insured" means an ~~insured~~ individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an ~~insured~~ individual or entity making, alleging, or pursuing a claim or cause of action ~~arising from or related in any manner to~~ for which coverage may be provided by the insurance policy issued by the insurer to the ~~insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured~~ individual or entity.

(c) "Third-party claimant" means a third party making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242. For purposes of

this definition, the term also means an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of the third-party claimant.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

AMEND

MINUTES

MONTANA SENATE

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Jason Small-R, on February 02, 2023 at 8:31 AM, in 422

ROLL CALL

Members Present:	Sen. Jason Small, Chair (R) Sen. Willis Curdy, Vice Chair (D) Sen. Mark Noland, Vice Chair (R) Sen. Steve Fitzpatrick (R) Sen. Mike Fox (D) Sen. Bruce Gillespie (R) Sen. Walt Sales (R) Sen. Terry Vermeire (R)
Members Excused:	Sen. Jason Ellsworth (R) Sen. Christopher Pope (D)
Staff Present:	Daisy Rhodes, Secretary Erin Sullivan, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 165 01/31/2023
SB 178 01/31/2023
SB 209 01/31/2023
SB 216 01/31/2023
SB 236 01/31/2023

Executive Action:

HEARING ON SB 165 - Establishing a duty of cooperation relating to insurance policies

Opening Statement:

08:32:10 Sen. Barry Usher (R), SD 40, opened the hearing on SB 165, Establishing a duty of cooperation relating to insurance policies.

Proponent Testimony:

08:34:31 Charles Robison, Montana Chamber of Commerce (MtCoC) and Montana Manufacturing Association (MMA)

EXHIBIT(230202BUSa1)

08:38:38 Brad Dantic, Alps Property and Casualty Insurance Company

EXHIBIT(230202BUSa2)

08:45:04 Aimee Grmoljez, American Property and Casualty Insurers of America (APCIA)

08:47:07 Peter Strauss, Montana Self Insurers Association

08:47:39 Jessie Luther, Montana Hospital Association (MHA)

08:48:29 Cary Hegreberg, Montana Banker Association

08:49:09 John Iverson, Montana Tavern Association (MTA), and Independent Insurance Agents of Montana

08:51:04 Robert Phillips, self

08:57:31 Scott Tuxbury, self

Opponent Testimony:

09:00:41 Jim Hunt, Montana Trial Lawyers Association (MTLA)

09:04:38 Al Smith, Montana Trial Lawyers Association (MTLA)

09:10:46 Frank Cote, Commissioner of Security and Insurance Office

Informational Witness Testimony:

None

Questions from Committee:

09:14:22 Vice Chair Mark Noland

09:14:45 Charles Robison, MtCoC and MMA

09:16:19 Vice Chair Mark Noland

09:16:28 Aimee Grmoljez, APCIA

09:17:57 Vice Chair Willis Curdy

09:21:38 Aimee Grmoljez, APCIA

09:22:13 Vice Chair Willis Curdy

09:23:22 Al Smith, MTLA

09:24:10 Sen. Steve Fitzpatrick

09:26:46 Frank Cote, Commissioner of Security and Insurance Office

09:27:24 Vice Chair Mark Noland

09:30:12 Brad Dantic, Alps Insurance Agency

09:30:45 Sen. Steve Fitzpatrick

09:31:34 Brad Dantic, Alps Insurance Agency

09:32:14 Vice Chair Willis Curdy

09:32:53 Brad Dantic, Alps Insurance Agency

Closing Statement:

09:33:36 Sen. Barry Usher (R), SD 40, closed the hearing on SB 165.

HEARING ON SB 216 - Revise laws related to litigation and products

Opening Statement:

09:38:25 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 216, Revise laws related to litigation and products.

Proponent Testimony:

09:47:17 Charles Robison, Montana Chamber of Commerce (MtCoC), and Montana Manufacturing Association (MMA)

EXHIBIT(230202BUSa3)

09:49:13 Lee Mickus, Montana Chamber of Commerce (MtCoC), and American Tort Reform Association (ATRA)

09:57:15 Bryan Wood, Wood's Power Grip

10:06:28 Ronda Wiggers, National Federation of Independent Business (NFIB)

10:07:54 Dan Brooks, Billings Chamber of Commerce

10:09:14 Ian McIntosh, American Property Casualty Insurance Association

Opponent Testimony:

10:12:55 Jim Hunt, Montana Trial Lawyers Association (MTLA)

10:20:20 Al Smith, Montana Trial Lawyers Association (MTLA)

10:28:33 Max Kirchhoff, Western Justice Associates

Informational Witness Testimony:

None

Questions from Committee:

10:36:18 Chair Jason Small

10:41:44 Al Smith, MTLA

10:42:07 Sen. Walt Sales

10:44:21 Sen. Steve Fitzpatrick-R

10:44:30 Vice Chair Willis Curdy

10:44:58 Sen. Steve Fitzpatrick-R

10:46:25 Vice Chair Willis Curdy

10:46:41 Sen. Steve Fitzpatrick-R

Closing Statement:

10:47:07 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 216.

HEARING ON SB 178 - Generally revise cryptocurrency laws

Opening Statement:

10:49:26 Sen. Daniel Zolnikov (R), SD 45, opened the hearing on SB 178, Generally revise cryptocurrency laws.

Discussion:

EXHIBIT(230202BUSa4)

Proponent Testimony:

10:54:11 Dennis Porter, Satoshi Action Fund

11:01:05 Eric Perterson, Satoshi Action Fund

11:01:54 Henry Kriegel, Americans for Prosperity Montana (AFP-MT)

Opponent Testimony:

11:05:09 Thomas Jodoin, Montana League of Cities and Towns (MLCT)

11:09:00 Keegan Medrano, American Civil Liberties Union of Montana (ACLU)

Questions from Committee:

11:14:09 Vice Chair Mark Noland

11:15:13 Kegan Medrano, ACLU

Opponent Testimony:

11:15:35 Ann Hedges, Montana Environmental Information Center (MEIC)

EXHIBIT(230202BUSa5)

11:25:55 Gary Matson, self

Informational Witness Testimony:

None

Questions from Committee:

11:28:29 Chair Jason Small

11:29:12 Sen. Daniel Zolnikov-R

11:29:14 Vice Chair Willis Curdy

11:29:24 Anne Hedges, MEIC

11:30:15 Vice Chair Willis Curdy

11:32:13 Thomas Jodoin, MLCT

11:32:49 Vice Chair Mark Noland

11:38:12 Dennis Porter, Satoshi Action Fund

11:38:58 Chair Jason Small

11:43:45 Dennis Porter, Satoshi Action Fund

11:44:19 Vice Chair Willis Curdy

11:47:49 Anne Hedges, MEIC

11:49:16 Sen. Walt Sales

11:50:55 Sen. Daniel Zolnikov-R

Closing Statement:

11:52:25 Sen. Daniel Zolnikov (R), SD 45, closed the hearing on SB 178.

HEARING ON SB 209 - Revise laws relating to Montana distilleries

Opening Statement:

11:58:24 Sen. Greg Hertz (R), SD 12, opened the hearing on SB 209, Revise laws relating to Montana distilleries.

Proponent Testimony:

12:01:46 Jennifer Hensley, Montana Distillers Guild (MDG)

EXHIBIT(230202BUSa6)

EXHIBIT(230202BUSa7)

12:09:19 Courtney McKee, Headframe Spirits

EXHIBIT(230202BUSa8)

12:14:21 Ethan Kohoutek, Montana Brewers Association and Ten Mile Creek Brewery

12:14:59 Heidi Rosenleaf, Headframe Spirits

12:15:24 Amy Nerison, Liquor Store Owners Association of Montana, and on behalf of Beer and Wine Distributors of Montana

12:15:54 Ryan Montgomery, Montgomery Distillery

12:16:56 Willie Blazer, Willie's Distillery

12:17:37 Matt Melugin, Willie's Distillery

EXHIBIT(230202BUSa9)

12:17:52 Tyrrell Hibbard, Gulch Distillers

12:18:19 Carolina Balliew, Lakeside Distillery

EXHIBIT(230202BUSa10)

12:19:11 Steffen Rasile, Gulch Distillers

12:19:26 Nicolas Lee, Glacier Distilling

12:20:37 Erica Droge, Dryhouse Distillery

Opponent Testimony:

12:22:00 John Iverson, Montana Tavern Association (MTA)

EXHIBIT(230202BUSa11)

12:25:24 Mary Jane Heisler, Montana Tavern Association (MTA)

12:25:48 Tom Heisler, Montana Tavern Association (MTA)

Informational Witness Testimony:

12:26:21 Steve Swanson, Department of Revenue - Alcoholic Beverage Control Division

Questions from Committee:

12:26:47 Chair Jason Small

12:26:48 Jen Hensley, MDG

Closing Statement:

12:28:49 Sen. Greg Hertz (R), SD 12, closed the hearing on SB 209.

HEARING ON SB 236 - Establish time limited demand standards

Opening Statement:

12:31:50 Sen. Greg Hertz (R), SD 12, opened the hearing on SB 236, Establish time limited demand standards.

Proponent Testimony:

12:34:06 Charles Robison, Montana Chamber of Commerce (MtCoC)

EXHIBIT(230202BUSa12)

12:35:05 Brad Dantic, Alps Insurance Agency

12:36:47 Aimee Grmoljez, American Property and Casualty Insurance Association (APCIA) and on behalf of the Montana Hospital Association, Montana Bankers Association

12:37:18 John Iverson, Montana Tavern Association (MTA) and Independent Insurance Agents of Montana

12:37:35 Scott Tuxbury, self

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

12:39:00 Vice Chair Willis Curdy

12:40:32 Brad Dantic, Alps Insurance Agency

12:41:07 Chair Jason Small

Closing Statement:

12:41:11 Sen. Greg Hertz (R), SD 12, closed the hearing on SB 236.

ADJOURNMENT

Adjournment: 12:42:33

_____

Daisy Rhodes, Secretary

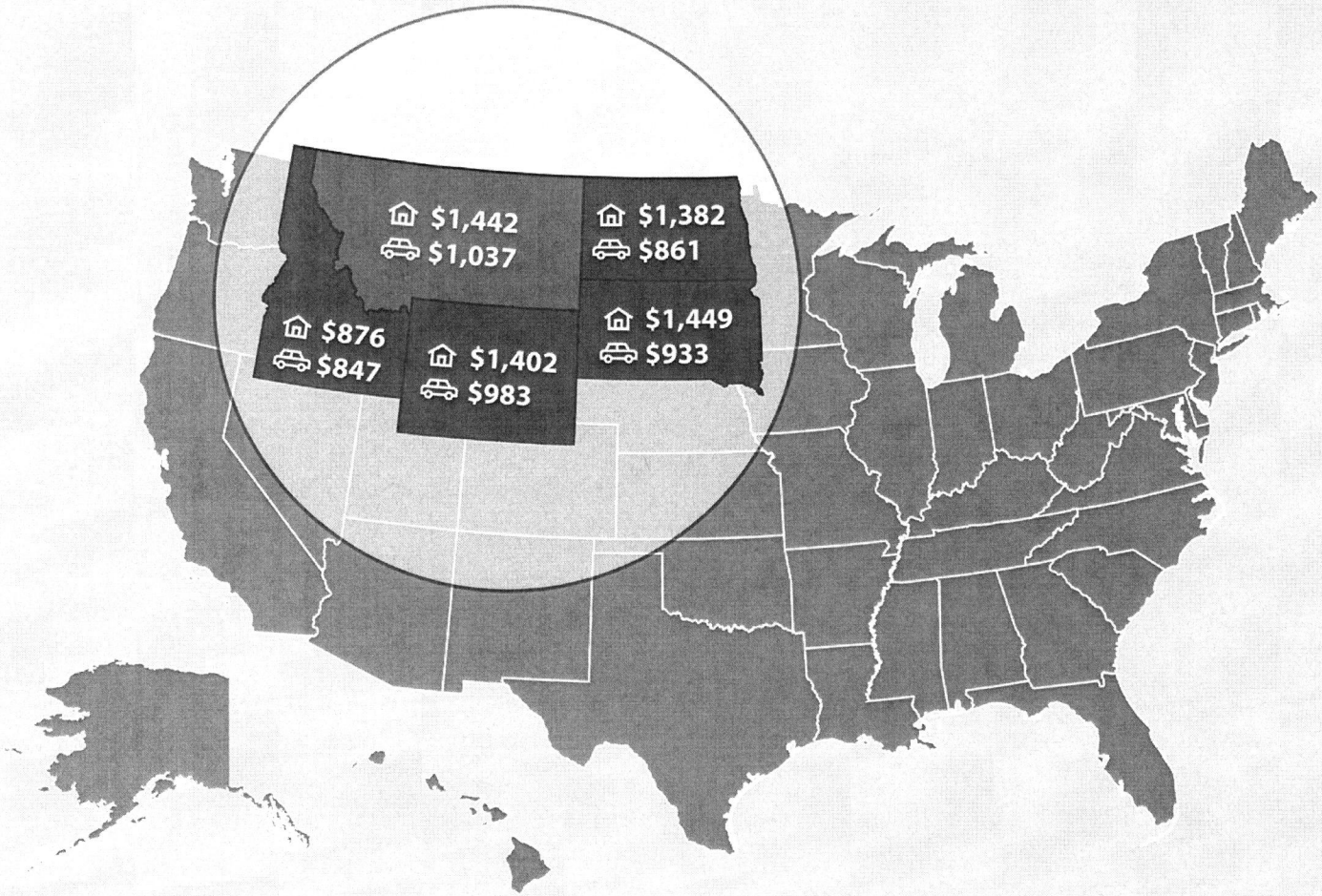
Additional Documents:EXHIBIT(230202BUSaad)

SENATE BUSINESS & LABOR
Exhibit No. 1
Date 2/2/23
Bill No. SB165

STATES WITH HIGHEST TORT COSTS AS PERCENTAGE OF STATE GDP (2020)

State	Total Tort Costs [1]	State GDP [2]	Tort Costs as % of State GDP [3]
FL	$40,173	$1,106,036	3.63%
LA	$7,040	$235,437	2.99%
NM	$2,745	$98,472	2.79%
DE	$2,033	$75,787	2.68%
NJ	$16,552	$618,579	2.68%
#6 MT	**$1,358**	**$51,509**	**2.64%**
MS	$2,998	$113,846	2.63%
AR	$3,380	$130,751	2.59%
GA	$15,922	$622,628	2.56%
SC	$6,239	$244,882	2.55%
Top 10 States	**$98,439**	**$3,297,926**	**2.98%**

Sources and Notes:
[2]: Bureau of Economic Analysis, Gross Domestic Product by state: All industry total. Last updated: March 31, 2022.
[3] = [1] / [2].



Sources:
National Association of Insurance Commissioners - 2018/2019 Auto Insurance Database Report
National Association of Insurance Commissioners - Dwelling, Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report: Data for 2019

MONTANA

13% Higher than Average of Border States

15% Higher than Average of Border States

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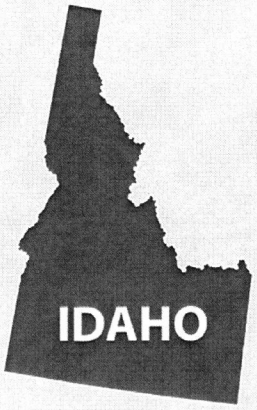
vs



65% Higher than Idaho

22% Higher than Idaho

Sources:
National Association of Insurance Commissioners - 2018/2019 Auto Insurance Database Report
National Association of Insurance Commissioners - Dwelling, Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report: Data for 2019

SB165: Insurance Claims Cooperation

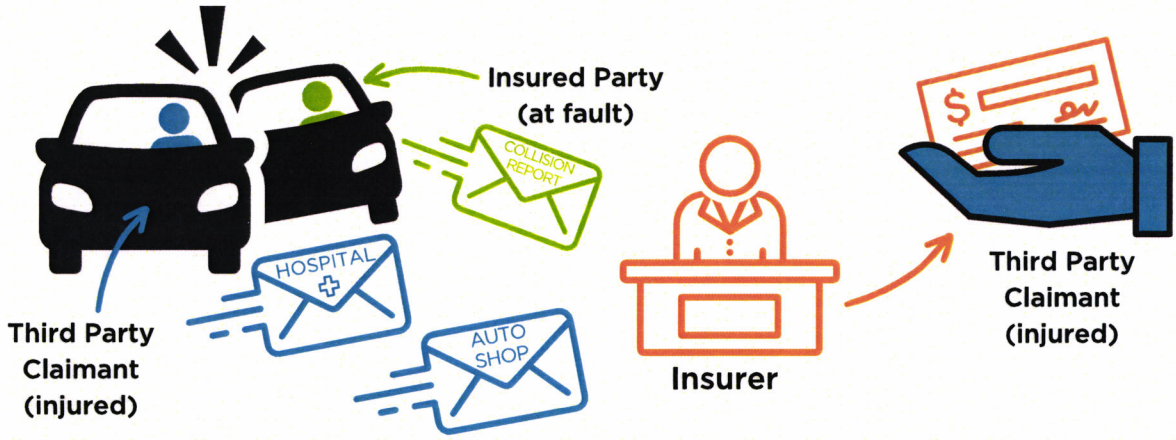
SB165 will enhance cooperation, reduce litigation, and eliminate the incentive to "set up" an insurance company for bad faith cause of action.

Duty to Cooperate

In current statute, there are no obligations for an injured claimant (the third party claimant) to cooperate with the insurance company as it adjusts the claim. SB165 would establish this affirmative duty to provide the insurance company with information necessary to investigate and evaluate an insurance claim. Insurance companies have statutory obligations to investigate claims timely and reasonably and to settle claims promptly where liability is reasonably clear. An insurance company's ability to fulfill its obligations is hindered by the failure or refusal of claimants to cooperate – this bill merely codifies a duty to cooperate by all parties.

Affirmative Defense

Since insurance companies have a statutory obligation investigate claims timely and reasonably, they may be subject to a bad faith claim if they delay. However, if the insured or third-party claimant refuse to cooperate, the insurance company is unable to meet the statutory duty without essential important information. Some lawyers may encourage their client to be uncooperative in order to set up a bad faith claim and extract more money from the insurer. SB165 allows an insurance company to raise the claimant's lack of cooperation in the company's defense.



Remove duplicative Common Law bad faith tort claim

MCA 33-18-242 currently provides a statutory remedy for a third-party claimant if an insurance company fails to settle claims promptly, fairly and equitably. SB 165 ends the duplicative court-created tort of common law bad faith for third-party claimants. No such claim exists for the insured party.

MONTANA CHAMBER OF COMMERCE | WE MEAN BUSINESS

SENATE BUSINESS & LABOR
Exhibit No. 2
Date 2/2/23
Bill No. SB 165

Montana Code Annotated 2021

TITLE 33. INSURANCE AND INSURANCE COMPANIES
CHAPTER 18. UNFAIR TRADE PRACTICES
Part 2. Insurer's Relations With Insured and Claimant

Independent Cause Of Action -- Burden Of Proof

33-18-242. Independent cause of action -- burden of proof. (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of **33-18-201**.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of **33-18-201**. Exemplary damages may also be assessed in accordance with **27-1-221**.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of **33-18-201**; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them.

Montana Code Annotated 2021

TITLE 33. INSURANCE AND INSURANCE COMPANIES
CHAPTER 18. UNFAIR TRADE PRACTICES
Part 2. Insurer's Relations With Insured and Claimant

Unfair Claim Settlement Practices Prohibited

33-18-201. Unfair claim settlement practices prohibited. A person may not, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application that was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Montana State Legislature

2023 Session

Senate Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- All Public Testimony document(s) may or may not be scanned, but will be on file at the Montana Historical Society for your research.
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE

REGULAR

(S) Business, Labor, and Economic Affairs

Date: 02/02/2023 **Time:** 8:30 AM

Place: Capitol **Room:** 422

BILLS and RESOLUTIONS HEARD:

SB 165 Establishing a duty of cooperation relating to insurance policies - Sen. Barry Usher

SB 178 Generally revise cryptocurrency laws - Sen. Daniel Zolnikov

SB 209 Revise laws relating to Montana distilleries - Sen. Greg Hertz

SB 216 Revise laws related to litigation and products - Sen. Steve Fitzpatrick

SB 236 Establish time limited demand standards - Sen. Greg Hertz

EXECUTIVE ACTION TAKEN:

Comments:

Sen. Jason Small-R, Chair

Senate

Roll Call

(S) Business, Labor, and Economic Affairs

DATE: 02/02/2023
TIME: 8:30 AM

NAME	PRESENT	ABSENT/EXCUSED
Curdy, Willis	X	
Ellsworth, Jason		X
Fitzpatrick, Steve	X	
Fox, Mike	X	
Gillespie, Bruce	X	
Noland, Mark	X	
Pope, Christopher		X
Sales, Walt	X	
Small, Jason	X	
Vermeire, Terry	X	

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB 216 **Sponsor(s)** Sen Fitzpatrick

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Al Smith	MTTLA		X	
Lee Mickus	ATRA	X		
Charles Robison	MT Chamber	✓		
Bryan Wood	Wood's Power Grip	✓		
Sean Slanger	Montana Defense Trial Lawyers	✓		
Anne Gerhuser	APCIA	X		
Randa Veliquette	NFIB	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB165 **Sponsor(s)** Sen Usher

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Al Smith	MTLA		X	
Brad Dantic	ALPS	X		
Charles Robison	MT Chamber	✓		
Peter Strauss	MT Self-Insurers	X		
Eric Peterson	Satoshi action fund	X		
Dennis Porter	Satoshi action fund	✓		
Anne Gruner	APCIA	X		
Jim Hunt	MTLA		X	
Cary Hegreberg	MT Bankers	X		
Greg Van Horssen	State Farm	X		
Brian Spears	NAMIC	X		
John Iverson	MTA	X		
John Iverson	Independent Insurance Agents	X		
Jesse Luther	MHA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB178 **Sponsor(s)** Sen. Zolnikov

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Keegan Medrano	ACLU-MT		X	
THOMAS JODOIN	MCCT		X	
Henry Kriegel	AFP-MT	X		
Andy Hedges	MEIC		X	
Dennis Pistel	SAF	X		
Eric Peterson				X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB209 **Sponsor(s)** Sen. Hertz

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Courtney McKee Butte	Headframe	X		
Heidi Rosenleaf Butte	Headframe	X		
Ryan Montgomery	Montgomery	X		
Tom Meister	MTA		X	
Mary Jane Heiels	MTA		X	
~~Amee Grantier~~	~~MCA~~	X		
JEN HENSLEY	MT Distillers Gld	X		
John Iverson	MTA		X	
Amy Nerison	LSOAM	X		
Steffen Rasile Helena	Gulch Distillers	X		
Caroline Balliew	Lakeside Distillery	X		
~~Matt Melvin~~	~~Willies Distillery~~	X		
Tyrrell Hibbard Helena	Gulch Distillers	X		
Willie BLAZER	Willie Distillery	X		
Debra Pitassy	MBWDA	X		
Steve Swenson	MT/DEPT. OF REV			X
Ethan Schwartz	MBA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB236 **Sponsor(s)** Sen Hertz

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Brad Dantic	ALPS	X		
Charles Robison	MT chamber	✓		
Amelia Rouser	APCIA	X		
Greg VanHorssen	State Farm	X		
Brice Spence	NAMIC	X		
Cary Hegreberg	MT Bankers	X		
John Fanguy	MTA	X		
John Iverson	Independent Insurance Agents	X		
Jesse Luther	MHA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Date	Committee	H/S	Bill #	Position	Requester Name	Location	Email	Phone	Affiliation	Comments	Past Deadline
2/2/23	BUS	SB	165	Proponent	Scott Tuxbury	Trout Creek, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	165	Proponent	Robert J Phillips	Missoula, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	178	Opponent	Gary Matson	Milltown, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	209	Proponent	Jim Harris	Bozeman, MT	[redacted]	[redacted]	Montana Distillers Guild and Bozeman Spirits		
2/2/23	BUS	SB	209	Proponent	Nicolas Lee	West Glacier, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	216	Proponent	Dan Brooks	Billings, Mt	[redacted]	[redacted]	Billings Chamber of Commerce		
2/2/23	BUS	SB	216	Proponent	Ian McIntosh	Bozeman, MT	[redacted]	[redacted]	APCIA		
2/2/23	BUS	SB	216	Opponent	Maxwell Kirchhoff	Bozeman, MT	[redacted]	[redacted]	Western Justice Associates, PLLC		
2/2/23	BUS	SB	223	Proponent	Tracey Murrish	Billings, MT	[redacted]	[redacted]	Billings Clinic		
2/2/23	BUS	SB	236	Proponent	Scott Tuxbury	Trout Creek, Mt	[redacted]	[redacted]	N/A		

Additional Documents
SENATE: Business & Labor
Date: 2/2
Bill No. SB165

Business , Labor and Economic Affairs Committee

Montana Senate

Sen. Jason Small, Chair

Re **SB 165**

January 27, 2023

Dear Sen. Small and Honorable committee members,

I write to inform this committee of the legal, economic and practical effect of the portion of this bill which would eliminate an insurers legal duty of good faith to third-party claimants.

As in nearly every state, Montana has long recognized that the *protection* purpose of insurance is destroyed by practices that deliberately and in "bad faith" exploit the vulnerability of claimants who are incapacitated by an accidental injury and who are under the financial pressure of devastating medical expenses. The duty imposed by the rule is not onerous, nor does it attach to any case where there is reasonable defenses. The rule simply provides that, in cases of clear liability, the insurer must make "good faith" attempt to effectuate a **fair** and equitable settlement.

Section 2 of S.B. 165 would eliminate this duty. In short the legislature would be saying that even in cases of crystal clear liability, an insurance company is allowed to act in bad faith, to exploit and leverage the claimant, and that the insurer cannot be held accountable for even the most malicious and exploitive tactics.

I am attaching to this letter an op-ed piece that describes how, *even with the current law in place,* insurers are strategically and intentionally breaching the duty to attempt settlement of clear liability cases because of the profits it can make while claim settlement delayed. There is a multi billion dollar financial market for these claims. That market is built on the expressly stated premise of "time-value" of delayed settlements. Offshore companies in the Cayman islands and other private equity investors are investing in this strategy:

1.deny claimants what they are clearly due ;

2. force the claimants to clog the courts with unnecessary litigation and,

3. when the judgment finally is paid, the insurer will have made **more money** on investments during the delay than the amount of the liability itself.

In legal terms this strategy means that Montana courts will be clogged up with unnecessary litigation for decades.

In practical terms this means that an offshore investment entity is using money that is clearly owed to a person who needs it for an oxygen machine, as investment capital. It is literally a strategy to make investments dependent on the length of human suffering.

Investment in Suffering

Mr. X has been waiting many years for a settlement of his claim for severe asbestosis. He will die soon. There is little chance he will receive payment for the medical care that he needs in the end stage of this suffocating disease. The claim can't be timely settled because it was retroactively acquired by a private equity investment fund that received a hundreds of millions of dollars to take over asbestosis claims. It is an investment that only yields a profit if claims like his can be delayed while the firm exploits the "float" between claim acquisition and claim resolution. For Mr. X, the investment strategy requires that he suffer needlessly even though liability on his claim is indisputable.

The investment scheme masquerades under the genteel phrase "retroactive reinsurance," but it is not insurance at all. It is a base and inhumane vehicle for turning a human ordeal into a commodity.

Insurance and reinsurance make up a valuable and essential system for society and economies by spreading the risk of serious or catastrophic loss from fortuitous events. But, by its definition and essential function, insurance cannot be retroactive because the fortuity has already occurred. The claim has been presented. The known loss has become a liability for existing, though unliquidated, personal injury damages.

Most people have had to present insurance claims, and many have experienced the frustration of delays. But true insurance is a highly regulated industry. Laws of every state provide protection to the claimant, and impose duties of timely acceptance coverage, prompt communication, good faith and reasonable claim resolution where liability is clear. In contrast, a private equity investment firm is not an insurer. Its sole duty is to its investors, and, when the investment is in pending claims, the primary way to maximize profit is to increase the delay so that the period of "float" is extended.

For a person like Mr. X, who is in the final months of his illness, the settlement of his clear liability claim is not responsive to insurance claim handling regulation. Instead, like any other investment commodity, the claim investment responds to market forces and the profit objectives of an investment entity far removed from the purpose of insurance to provide protection for insurable risk. As one analyst explains, "There is a third-party commercial market for these transactions, and several such deals have been consummated. In return for assuming the liability, the buyer receives a substantial cash premium, and transfer or assignment of any existing insurance proceeds. Typically, the loss portfolio is isolated, and converted or sold into a litigation shell owned and operated by the third-party buyer." *Private Equity Wants To Buy Your Asbestos Liabilities,* Stephen Hoke, Law360 and Products Liability360, October 31, 2019.

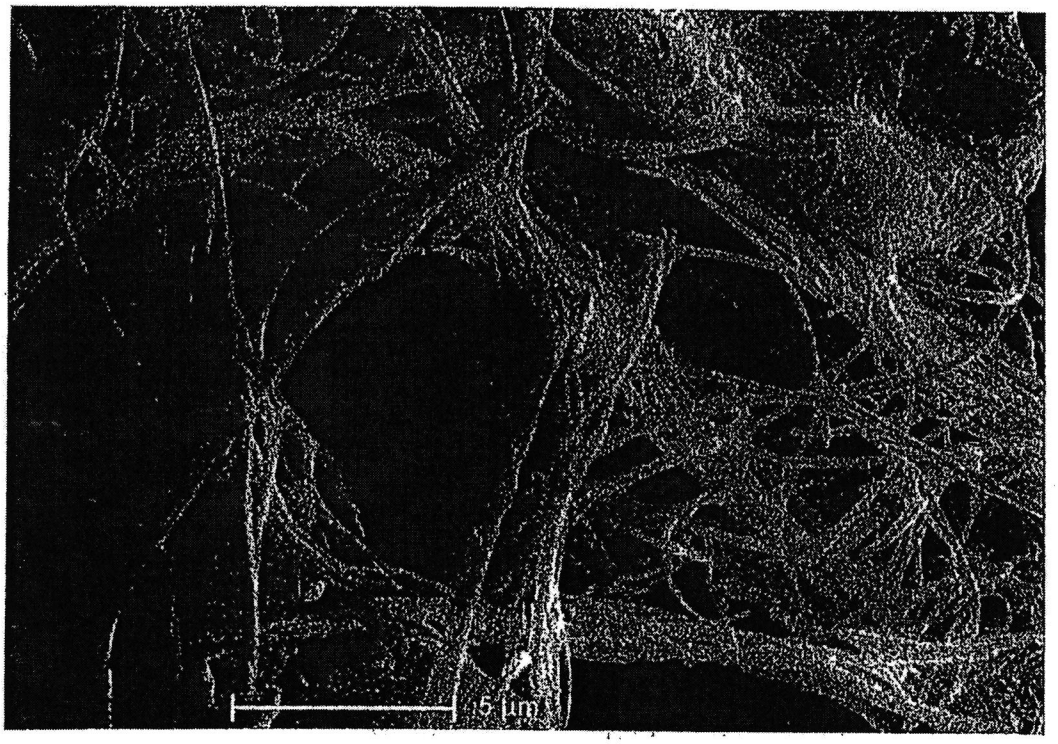
The legal question of the permissibility of systematic incentives for delayed claim handling under the guise of "retroactive' reinsurance is being tested in courts. The greater

Daily **Montanan**

ENVIRONMENT
JUSTICE

Federal lawsuit claims insurance company deliberately stalling in Libby asbestos cases

BY: DARRELL EHRLICK - JANUARY 22, 2023 9:18 AM



☐ A scanning photography of asbestos (Photo by Getty Images).

bellwether case. Because his case was so convincing, the attorney Clifford Edwards argues that Zurich had the desire to make sure justice – and payments – were delayed, in part to discourage other claims.

"Specifically Zurich used leveraging designed to exploit Hutt's vulnerable position through withheld medical expense and low-ball offers," the suit said.

Representatives from Zurich declined comment on the case for this story.

The lawsuit claims Zurich had plenty of reason to delay a settlement or drag out court proceedings: If Hutt's case was successful, it would establish a precedent for similar cases, and a court record replete with facts and documents.

While Hutt went through several years of litigation, Zurich denied claims, including support for basic healthcare service, for example, supplemental oxygen.

Part of the case is buttressed by a decision by the Montana State Supreme Court last year when the state's highest court determined that Maryland Casualty had breached its duty in a scathing rebuke from Chief Justice Mike McGrath:

> "Maryland Casualty Company was not merely negligent in its failure to act; rather, in strategically recognizing the latency period for asbestosis to develop, MCC engaged in affirmative actions to conceal the asbestos exposure risk and worker injuries to avoid liability, effectively increasing the risk of additional harm to mill workers from further asbestos exposure."

The suit claimed by playing a sort of legal hardball with Hutt, that Zurich could be lessening liability. Because Hutt's case was the first of its type, if Hutt had settled, it would have likely left Zurich in a better bargaining position for other cases. This created a high-stakes game in court while Hutt struggled to get out of the house because of his advanced lung disease likely caused by asbestos exposure, court documents said.

"At an average annual rate of return in excess of 11%, Zurich has earned hundreds of millions of dollars on the Libby asbestos claim reserves for fully accrued clear

MINUTES

MONTANA SENATE

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Jason Small-R, on February 10, 2023 at 8:30 AM, in 422

ROLL CALL

Members Present:	Sen. Jason Small, Chair (R) Sen. Willis Curdy, Vice Chair (D) Sen. Mark Noland, Vice Chair (R) Sen. Mike Fox (D) Sen. Bruce Gillespie (R) Sen. Walt Sales (R) Sen. Terry Vermeire (R)
Members Excused:	Sen. Jason Ellsworth (R) Sen. Steve Fitzpatrick (R) Sen. Christopher Pope (D)
Staff Present:	Daisy Rhodes, Secretary Erin Sullivan, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 243 02/06/2023
SB 263 02/06/2023
SB 264 02/06/2023

Executive Action:

SB 22 DO PASS AS AMENDED
SB 165 DO PASS AS AMENDED
SB 178 DO PASS AS AMENDED
SB 211 DO PASS AS AMENDED
SB 216 DO PASS
SB 223 TO TABLE
SB 236 DO PASS AS AMENDED
SB 244 DO PASS AS AMENDED
SB 270 DO PASS AS AMENDED
SB 263 DO PASS

HEARING ON SB 263 - Allow airport authorities to enter into certain contracts for 50 years

Opening Statement:

08:31:26 Sen. Keith Regier (R), SD 3, opened the hearing on SB 263, Allow airport authorities to enter into certain contracts for 50 years.

Proponent Testimony:

08:32:28 Tom Ebzery, Montana Airport Managers Association (MAMA)

08:34:57 Ian McKay, Montana Airport Managers Association (MAMA)

08:38:05 Ross Marty, Montana Airport Managers Association (MAMA) and the Helena Regional Airport

Opponent Testimony:

None

Informational Witness Testimony:

08:40:31 Tim Conway, Director of Aeronautics, Montana Department of Transportation (MDT)

Questions from Committee:

08:40:57 Sen. Bruce Gillespie

08:42:15 Tom Ebzery. MAMA

08:42:52 Sen. Walt Sales

08:43:17 Ian McKay, MAMA

08:44:01 Vice Chair Willis Curdy

08:47:09 Ross Marty, MAMA

08:47:45 Sen. Walt Sales

08:48:08 Ross Marty, MAMA

Closing Statement:

08:49:35 Sen. Keith Regier (R), SD 3, closed the hearing on SB 263.

HEARING ON SB 264 - Revise airport all-beverage license laws

Opening Statement:

08:50:24 Sen. Keith Regier (R), SD 3, opened the hearing on SB 264, Revise airport all-beverage license laws.

Proponent Testimony:

08:51:26 Tom Ebzery, Montana Airport Managers Association (MAMA)

08:54:16 Ian McKay, Montana Airport Managers Association (MAMA)

08:57:07 Ross Marty, Montana Airport Managers Association (MAMA)

Opponent Testimony:

None

Informational Witness Testimony:

08:59:21 Tim Conway, Director of Aeronautics, Montana Department of Transportation (MDT)

08:59:41 Becky Schlauch, Alcohol and Beverage Control Commission, Montana Department of Revenue (DOR-ABC)

Questions from Committee:

09:00:11 Chair Jason Small

09:00:31 Becky Schlauch, DOR-ABC

09:00:51 Vice Chair Willis Curdy

09:03:15 Becky Schlauch, DOR-ABC

Closing Statement:

09:03:53 Sen. Keith Regier (R), SD 3, closed the hearing on SB 264.

HEARING ON SB 243 - Prohibit discrimination in real-estate sector based on free speech and religion

Opening Statement:

09:05:28 Sen. Keith Regier (R), SD 3, opened the hearing on SB 243, Prohibit discrimination in real-estate sector based on free speech and religion.

Proponent Testimony:

09:08:00 Matthew Monforton, self

EXHIBIT(230210BUSa1)

09:15:27 Brandon Huber, self

09:22:01 Donna Elford, Lewis and Clark Republican Women

EXHIBIT(230210BUSa2)

09:24:24 Sarah Bauer, self

EXHIBIT(230210BUSa3)

EXHIBIT(230210BUSa4)

09:29:03 Steve Netschert, self

EXHIBIT(230210BUSa5)

09:31:44 Jacob (Joey) Duwe, self

09:34:20 Sen. Theresa Manzella, Senate District 44

09:37:53 Lance Kinzer, First Amendment Partnership

09:48:07 Constance Neumann, self

Opponent Testimony:

09:50:53 Sam Sill, Montana Association of Realtors (MAR)

09:55:42 Robert Erickson, Montana Association of Realters (MAR)

EXHIBIT(230210BUSa6)

10:07:55 Adrian Jawort, self

10:11:44 Dr. Angelina Gonzalez-Aller, Montana Human Rights Network (MHRN)

Informational Witness Testimony:

None

Questions from Committee:

10:15:25	Sen. Bruce Gillespie
10:15:54	Joey Duwe
10:16:20	Chair Jason Small
10:16:36	Sam Sill, MAR
10:16:55	Chair Jason Small
10:17:17	Vice Chair Mark Noland
10:25:42	Sam Sill, MAR
10:26:29	Vice Chair Mark Noland
10:27:18	Matthew Monfortin
10:29:36	Vice Chair Willis Curdy
10:30:23	Brandon Huber
10:32:31	Vice Chair Willis Curdy
10:34:08	Sam Sill, MAR
10:34:38	Vice Chair Mark Noland
10:35:24	Steve Netschert
10:37:35	Sen. Walt Sales
10:37:53	Matthew Monfortin

Closing Statement:

10:39:23 Sen. Keith Regier (R), SD 3, closed the hearing on SB 243.

10:41:16 **Discussion of Amendment to SB 178**

10:42:22 Erin Sullivan

10:43:23 Sen. Zolnikov

10:46:09 Chair Jason Small

10:48:46 **Recessed**

11:17:35 **Reconvened**

EXECUTIVE ACTION ON SB 22 - Generally revise independent contractor laws

11:17:57 **Motion:** Vice Chair Mark Noland moved that **SB 22 DO PASS.**

11:18:03 **Motion:** Vice Chair Mark Noland moved that **SB 22 BE AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:19:23 **Motion:** Vice Chair Mark Noland moved that **SB 22 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 165 - Establishing a duty of cooperation relating to insurance policies

11:19:52 **Motion:** Vice Chair Mark Noland moved that **SB 165 DO PASS.**

11:20:00 **Motion:** Vice Chair Mark Noland moved that **SB 165 BE AMENDED.**

Discussion:

11:20:25 Chair Jason Small

11:21:02 Erin Sullivan

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

11:23:23 **Motion:** Vice Chair Willis Curdy moved that **SB 165 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 178 - Generally revise cryptocurrency laws

11:24:27 **Motion:** Vice Chair Mark Noland moved that **SB 178 DO PASS.**

11:24:31 **Motion:** Vice Chair Mark Noland moved that **SB 178 BE AMENDED.**

Discussion:

11:25:02 Vice Chair Willis Curdy

11:26:08 Vice Chair Mark Noland

11:26:51 Chair Jason Small

12:27:38 **Vote:** Motion carried 8 - 2 by roll call vote with Sen. Curdy, Sen. Pope, voting no.
Sen. Pope, By Proxy

11:28:26 **Motion:** Vice Chair Mark Noland moved that **SB 178 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried 8 - 2 by roll call vote with Sen. Curdy, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 211 - Article V convention commissioner selection and credentialing act

11:29:18 **Motion:** Vice Chair Mark Noland moved that **SB 211 DO PASS.**

11:29:21 **Motion:** Vice Chair Mark Noland moved that **SB 211 BE AMENDED.**

Discussion:

11:29:48 Sen. Walt Sales

12:27:38 **Vote:** Motion carried unanimously by roll call vote.

11:31:15 **Motion:** Vice Chair Mark Noland moved that **SB 211 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 216 - Revise laws related to litigation and products

11:32:06 **Motion:** Vice Chair Mark Noland moved that **SB 216 DO PASS.**

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 223 - Establish requirements for insurance coverage of clinician-administered drugs

11:33:12 **Motion:** Vice Chair Mark Noland moved that **SB 223 DO PASS.**

Discussion:

11:33:19 Chair Jason Small

11:33:36 Vice Chair Mark Noland

11:33:50 Vice Chair Willis Curdy

12:27:38 **Vote:** Motion failed unanimously by voice vote.

11:43:58 **Motion:** Vice Chair Mark Noland moved that **SB 223 TO TABLE.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 236 - Establish time limited demand standards

11:35:31 **Motion:** Vice Chair Mark Noland moved that **SB 236 DO PASS.**

11:36:09 **Motion:** Vice Chair Mark Noland moved that **SB 236 BE AMENDED.**

Discussion:

11:37:02 Vice Chair Mark Noland

11:37:07 Vice Chair Willis Curdy

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:37:49 **Motion:** Vice Chair Mark Noland moved that **SB 236 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 244 - Revise laws related to internships in funeral homes

11:38:39 **Motion:** Vice Chair Mark Noland moved that **SB 244 DO PASS.**

11:38:43 **Motion:** Vice Chair Mark Noland moved that **SB 244 BE AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:39:27 **Motion:** Vice Chair Mark Noland moved that **SB 244 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 270 - Prohibit employee termination for legal social media posts

11:40:09 **Motion:** Vice Chair Mark Noland moved that **SB 270 DO PASS.**

11:40:15 **Motion:** Vice Chair Mark Noland moved that **SB 270 BE AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:41:13 **Motion:** Vice Chair Mark Noland moved that **SB 270 DO PASS AS AMENDED.**

Discussion:

11:41:30 Chair Jason Small

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 263 - Allow airport authorities to enter into certain contracts for 50 years

11:42:13 **Motion:** Vice Chair Mark Noland moved that **SB 263 DO PASS.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 11:44:36

_____

Trudy Burke, Secretary

Additional Documents:EXHIBIT(230210BUSaad)

Montana State Legislature

2023 Session

Additional Senate Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE

REGULAR

(S) Business, Labor, and Economic Affairs

Date: 02/10/2023 **Time:** 8:30 AM

Place: Capitol **Room:** 422

BILLS and RESOLUTIONS HEARD:

SB 243 Prohibit discrimination in real-estate sector based on free speech and religion - Sen. Keith Regier

SB 263 Allow airport authorities to enter into certain contracts for 50 years - Sen. Keith Regier

SB 264 Revise airport all-beverage license laws - Sen. Keith Regier

EXECUTIVE ACTION TAKEN:

SB 165:

SB 165 Do Pass as Amended

SB 178:

SB 178 Do Pass as Amended

SB 211:

SB 211 Do Pass as Amended

SB 216:

SB 216 Do Pass

SB 22:

SB 22 Do Pass as Amended

SB 223:

SB 223 To Table

SB 236:

SB 236 Do Pass as Amended

SB 244:

SB 244 Do Pass as Amended

SB 263:

SB 263 Do Pass

SB 270:

SB 270 Do Pass as Amended

Comments:

Sen. Jason Small-R, Chair

Senate

Roll Call

(S) Business, Labor, and Economic Affairs

DATE: 02/10/2023
TIME: 8:30 AM

NAME	PRESENT	ABSENT/EXCUSED
Curdy, Willis	X	
Ellsworth, Jason		X
Fitzpatrick, Steve		X
Fox, Mike	X	
Gillespie, Bruce	X	
Noland, Mark	X	
Pope, Christopher		X
Sales, Walt	X	
Small, Jason	X	
Vermeire, Terry	X	

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 165** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0165.001.001.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 7, No 3

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a third-party claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against ~~an~~ the insured, the insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ to the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a third-party claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ to the insurer.

(3) A breach of any of the duties of an insured or a third-party claimant set forth in this section does not create a separate or independent cause of action by an insurer against an insured or a third-party claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or a third-party claimant under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5) or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence ~~otherwise admissible~~ in a civil action ~~in the state~~ regarding the actions, inactions, and other conduct of an insured or a third-party claimant in a civil action commenced by an insured or a third-party claimant with respect to a claim or cause of action under 33-18-242

for an insurer's alleged violation of 33-18-201(4), (5) or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or a third-party claimant and that relates to, establishes, ~~or~~ proves, or may tend to establish or prove:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

~~(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.~~

~~(c)~~(b) "Insured" means an ~~insured~~ individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an ~~insured~~ individual or entity making, alleging, or pursuing a claim or cause of action ~~arising from or related in any manner to~~ for which coverage may be provided by the insurance policy issued by the insurer to the ~~insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured~~ individual or entity.

(c) "Third-party claimant" means a third party making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242. For purposes of

this definition, the term also means an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of the third-party claimant.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

AMEND

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 178** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0178.001.002.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 8, No 2

SENATE BILL NO. 178

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRYPTOCURRENCY LAWS; PROHIBITING DISCRIMINATORY DIGITAL ASSET MINING UTILITY RATES; PROHIBITING LOCAL GOVERNMENT POWERS RELATED TO DIGITAL ASSET MINING; PROHIBITING TAXATION ON THE USE OF CRYPTOCURRENCY AS A PAYMENT METHOD; PROVIDING FOR DIGITAL ASSETS AS PERSONAL PROPERTY; AMENDING SECTIONS 7-1-111, 15-1-101, AND 70-1-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, digital asset mining provides positive economic value for individuals and companies throughout the United States; and

WHEREAS, digital asset mining has often faced difficulty with regulations at the state and local level; and

WHEREAS, the State of Montana wants to protect the right of individuals and businesses to mine digital assets and create legal certainty for the digital asset mining industry; and

WHEREAS, digital asset mining has the potential to stabilize the grid and provide revenue for infrastructure upgrades statewide.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Digital asset mining ratemaking.** (1) The commission may not establish a rate classification for digital asset mining, digital asset mining businesses, or home digital asset mining that creates unduly discriminatory rates.

(2) For the purposes of this section, the following definitions apply:

(a) "Data center" means a use involving a building or premises in which the majority of the use is occupied by computers, telecommunications, or related equipment, including supporting equipment, where

information is processed, transferred, and stored.

(a) "Digital asset mining" means the use of electricity to power a computer for the purpose of securing a blockchain network.

(b) "Digital asset mining business" means a group of computers working at a single site that consume more than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

(c) "Discriminatory rates" means electricity rates substantially different from other ~~industrial~~ similar uses of electricity in similar geographic areas after accounting for the load profile and cost of service.

(d) "Home digital asset mining" means mining digital assets in areas zoned for residential use that consume less than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

NEW SECTION. **Section 2. Digital assets taxation.** ~~A state or local government entity may not charge an additional tax, withholding, assessment, or charge on the value of digital assets when used as a method of payment.~~(1) Digital assets used as a method of payment may not be subject to any additional tax, withholding, assessment, or charge by the state or a local government that is based solely on the use of the digital asset as the method of payment.

(2) Nothing in this section prohibits the state or a local government from imposing or collecting a tax, withholding, assessment, or charge otherwise authorized by Titles 15 or 16.

Section 3. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1);

(26) any power to impose requirements on a digital asset mining business as defined in [section 1] that are not also requirements for data centers in its area of jurisdiction.;

(27) any power to prevent home digital asset mining as defined in [section 1] at a private residence, except as related to existing noise or lighting ordinances; or

(28) any power to change the zoning of ~~an area that contains an active digital asset mining business as defined in [section 1]~~ any parcel or lot that contains an active digital asset mining business or adjacent parcels owned or controlled by an active digital asset mining business as defined in [section 1] or prevent a digital asset mining business from operating in an area zoned for industrial use."

Section 4. Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 211** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0211.001.001.

Signed: _____

Sen. Jason Small-R. Chair

-End-

Committee Vote:

Yes 7, No 3

SENATE BILL NO. 211

INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPOINTMENT, LIMITATIONS, INSTRUCTION, AND PENALTIES FOR COMMISSIONERS REPRESENTING THE STATE OF MONTANA AT AN ARTICLE V CONVENTION CALLED BY THE UNITED STATES CONGRESS TO PROPOSE AMENDMENTS TO THE UNITED STATES CONSTITUTION; PROVIDING PENALTIES; AND PROVIDING DEFINITIONS."

WHEREAS, Article V of the United States Constitution obligates Congress to call a convention for proposing amendments on the application of two-thirds of the several states; and

WHEREAS, the momentum for an Article V convention is growing to address fiscal excesses and jurisdictional encroachments by the federal government on state-reserved powers; and

WHEREAS, the voters of the State of Montana have made their preference for federal term limits known through the passage of Constitutional Initiative Measure No. 64 in 1992 with 67% approval; and

WHEREAS, the courts have struck down term limits for federal officials and an Article V convention to propose a term limit amendment is gaining momentum with the people.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to prepare for an eventual, if not imminent, Article V convention by providing for the appointment, limitations, instructions, and penalties for commissioners representing this state at an Article V convention.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Article V application" means a joint resolution adopted by the legislature on the same subject or subjects as two-thirds of the other states requiring the United States congress to call an Article V convention.

(2) "Article V convention" means a convention for proposing amendments to the United States

constitution as provided in Article V of the United States constitution.

(3) "Commissioner" means a person appointed as provided in [section 2] to represent the state at an Article V convention.

(4) "Delegation" means the group of commissioners appointed under [section 2].

(5) "Legislative instructions" means instructions given to the delegation before or during an Article V convention by the appointing authorities under [section 2(2)] or by the appointing authorities' agent designated for that purpose.

(6) "Unauthorized proposed amendment" means a proposed amendment that is outside the subject matter of the Article V application, outside the subject matter of the narrowest application relied on by the United States congress in calling the convention if the legislature did not make the application, or contrary to legislative instructions.

NEW SECTION. **Section 2. Appointment of commissioners -- vacancies.** (1) On a call by the United States congress for an Article V convention, ~~five~~ seven commissioners must be appointed to represent the state at the convention as provided in this section.

(2) The commissioners are appointed as follows:

(a) two commissioners by the speaker of the house of representatives~~,~~; and

(b) one commissioner each by the house majority leader, the president of the senate, ~~and~~ the senate majority leader ~~shall each appoint one commissioner~~, the house minority leader, and the senate minority leader. ~~The four appointed commissioners shall appoint the fifth commissioner by majority vote.~~

(3) (a) Each commissioner appointed pursuant to subsection (2) must be approved by a majority vote of each house of the legislature. If a commissioner fails to receive a majority vote in both houses, a new commissioner must be appointed in the same manner as the original appointment.

(b) If the legislature is not in session during the appointment process the secretary of state shall poll the members of the legislature by mail for approval of the commissioners.

(4) A vacancy in the delegation due to death, resignation, ineligibility, recall, or any other reason must be filled in the same manner as the original appointment.

(5) The vote of the delegation on a proposed amendment at an Article V convention must be agreed by a majority vote of the commissioners.

NEW SECTION. **Section 3. Prohibition on unauthorized proposed amendments.** (1) A commissioner may not vote to allow consideration of or vote to approve an unauthorized proposed amendment to the United States constitution.

(2) A commissioner casting a vote to allow consideration or approval of an unauthorized proposed amendment must be immediately recalled by the appointing authority or the speaker of the house of representatives.

(3) A commissioner who is recalled is not entitled to compensation or expenses as provided in [section 9].

NEW SECTION. **Section 4. Qualifications.** Commissioners must be current or former state legislators.

NEW SECTION. **Section 5. Oath.** On approval by a majority vote of both the house of representatives and the senate, each commissioner shall be required to take the following oath: "I do solemnly swear or affirm that to the best of my abilities, I will, as a commissioner of the state of Montana to an Article V convention, uphold the constitution and laws of the United States and the state of Montana. I will not propose or vote to allow consideration of or approve any unauthorized proposed amendment to the United States constitution. I will vote for convention rules that provide that each state have one vote."

NEW SECTION. **Section 6. Penalty.** A commissioner who violates the oath or affirmation provided in [section 5] shall be fined an amount not less than $500 or more than $5,000 to be levied by the secretary of state and deposited in the state general fund.

NEW SECTION. **Section 7. Convention rules.** (1) Each commissioner shall support a rule that gives

each state one equal vote at the Article V convention.

(2) Each commissioner shall support a rule prohibiting a state or commissioner from proposing an amendment that is outside the subject matter of the approved call of the convention.

(3) Each commissioner shall oppose a rule that would allow the rules under subsections (1) and (2) to be suspended by a majority or supermajority vote.

NEW SECTION. **Section 8. Certification.** The secretary of state shall certify in writing to the Article V convention the appointment of commissioners, the recall of commissioners, the filling of a vacancy in the delegation, and the nullification of a vote cast by a commissioner in violation of [sections 1 through 10].

NEW SECTION. **Section 9.** ~~**Expenses**~~**Compensation -- expenses.** After an Article V convention is called by the United States congress, the state shall provide for the reasonable compensation and expenses of the delegation for planning meetings, the Article V convention, and up to ~~three~~ four staff members or advisors of the delegation's choosing.

NEW SECTION. **Section 10. Term.** Except on the resignation, death, ineligibility, recall, or other vacation of office by a commissioner, the term of each commissioner must be for the duration of the Article V convention for which the commissioner was appointed, and the delegation must be dissolved and disbanded on the adjournment sine die of the Article V convention.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 10] are intended to be codified as a new ~~chapter~~ part in Title 5, chapter 5, and the provisions of Title 5, chapter 5, apply to [sections 1 through 10].

NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 216** (first reading copy – white) **Do Pass**.

Signed: _____

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 7, No 3

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 22** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0022.001.002.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 22

INTRODUCED BY S. MORIGEAU

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INDEPENDENT CONTRACTOR LAWS; PROVIDING DEPARTMENT ANALYSIS RELATING TO THE EMPLOYMENT STATUS OF A PERSON; REVISING LAWS RELATED TO INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATES; REQUIRING DEPARTMENT ANALYSIS IN CERTAIN CIRCUMSTANCES; AND AMENDING ~~SECTIONS 39-51-203, 39-71-417, AND~~ SECTION 39-71-419, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Independent contractor analysis.** ~~(1) The employment status of a person is determined by subsection (2) if the person does not have an independent contractor exemption certificate and:~~

~~(a) the person represents to a hiring agent that they have an independent contractor exemption certificate;~~

~~(b) the person applied for an independent contractor exemption certificate prior to the event triggering a department investigation;~~

~~(c) the person provided the hiring agent a forged independent contractor exemption certificate;~~

~~(d) the hiring agent contacted the department and was informed the person was an independent contractor;~~

~~(e) the person's independent contractor exemption certificate expires during the working relationship; or~~

~~(f) the person induced the hiring agent to commence the working relationship based on the worker's status as an independent contractor.~~

~~(2) The department shall investigate whether, as to the particular hiring agent:~~

~~(a) the person was free from direction and control in the performance of services; and~~

~~(b) the person was engaged in an independently established trade, occupation, profession, or business.~~

~~(3) A person found to meet the requirements of subsection (2) is an independent contractor.~~

~~**Section 2.** Section 39-51-203, MCA, is amended to read:~~

~~"**39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a limited liability company treated as a corporation pursuant to 39-51-207, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.~~

~~(2) (a) The term "employment" includes an individual's entire service performed within or both within and outside this state if:~~

~~(i) the service is localized in this state; or~~

~~(ii) the service is not localized in any state but some of the service is performed in this state and:~~

~~(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or~~

~~(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

~~(b) Service is considered to be localized within a state if:~~

~~(i) the service is performed entirely within the state; or~~

~~(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.~~

~~(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the~~

~~services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.~~

~~(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor. An individual may not be determined to be an employee based solely on not having an independent contractor exemption certificate.~~

~~(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.~~

~~(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.~~

~~(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state's law, if:~~

~~(i) the employer's principal place of business in the United States is located in this state;~~

~~(ii) the employer has no place of business in the United States, but:~~

~~(A) the employer is an individual who is a resident of this state;~~

~~(B) the employer is a corporation that is organized under the laws of this state; or~~

~~(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or~~

~~(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a~~

~~claim for benefits based on the service under the law of this state.~~

~~(b) An "American employer", for purposes of this subsection (7), means a person who is:~~

~~(i) an individual who is a resident of the United States;~~

~~(ii) a partnership if two-thirds or more of the partners are residents of the United States;~~

~~(iii) a trust if all of the trustees are residents of the United States; or~~

~~(iv) a corporation organized under the laws of the United States or of any state."~~

Section 1. Section 39-71-417, MCA, is amended to read:

"**39-71-417. Independent contractor certification.** (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(i) the applicant's name and address;

(ii) the applicant's social security number;

(iii) each occupation for which the applicant is seeking independent contractor certification; and

(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor. ~~Except as provided in [section 1], a person who does not have an independent contractor exemption certificate but is required to have one is conclusively presumed to be an employee.~~

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(d) A person without an independent contractor exemption certificate is rebuttably presumed to be an independent contractor when:

(i) the person represents to a hiring entity or individual in writing that the person has an independent contractor exemption certificate;

(ii) the person provides the hiring entity or individual a forged or otherwise fraudulent independent contractor exemption certificate; or

(iii) the person's independent contractor exemption certificate expires while the person is working under the contract and prior to full performance of the contract, for a period not to exceed 120 days following the expiration of the certificate.

(e) The department shall utilize the considerations set forth in subsections (4)(a)(i) and (4)(a)(ii) for any evaluation conducted under subsection (7)(d).

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

~~**Section 4.** Section 39-71-419, MCA, is amended to read:~~

~~"**39-71-419. Independent contractor violations -- penalty.** (1) A person may not:~~

~~(a) perform work as an independent contractor without first:~~

~~(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a); or~~

~~(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;~~

~~(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;~~

~~(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;~~

~~(d) alter or falsify an independent contractor exemption certificate; or~~

~~(e) misrepresent the person's status as an independent contractor. A person who falsely claimed,~~

~~either in writing or through credible evidence, to have an independent contractor certification may not be considered to be an employee solely based on not actually having an independent contractor exemption certificate. The burden of proof that an independent contractor is certified rests with the independent contractor and not the hiring entity.~~

~~(2) An employer may not:~~

~~(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or~~

~~(b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).~~

~~(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to $1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.~~

~~(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution."~~

~~NEW SECTION.~~ **~~Section 5. Codification instruction.~~** ~~[Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].~~

- END -

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 236** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0236.001.001.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 236

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STANDARDS TO BE SATISFIED BY A THIRD-PARTY CLAIMANT WHEN DELIVERING A WRITTEN TIME-LIMITED DEMAND TO AN INSURER; REQUIRING A THIRD-PARTY CLAIMANT TO DELIVER ALL AVAILABLE AND SUPPORTING DOCUMENTS, RECORDS, AND INFORMATION TO AN INSURER WHEN DELIVERING A TIME-LIMITED DEMAND; PROVIDING A FAIR AND REASONABLE OPPORTUNITY FOR AN INSURER TO TIMELY INVESTIGATE AND EVALUATE CLAIMS PRESENTED TO THE INSURER WITHOUT THE RISK OR EXPOSURE OF HAVING AN UNFAIR CLAIM SETTLEMENT PRACTICES OR INSURANCE BAD FAITH CLAIM ALLEGED AGAINST THE INSURER OR UNREASONABLY CREATING ADDITIONAL LIABILITY EXPOSURE TO THE INSURER BEYOND THE LIMITS OF LIABILITY SET FORTH IN THE INSURANCE POLICY; AND PROMOTING FAIR AND REASONABLE SETTLEMENT OF CLAIMS WHILE ALLOWING INSURERS A REASONABLE OPPORTUNITY TO INVESTIGATE AND EVALUATE CLAIMS AND TO PROMPTLY AND FAIRLY SETTLE CLAIMS TO PROTECT POLICYHOLDERS."

WHEREAS, it is declared to be the public policy of this state that fair, reasonable, and prompt settlements of civil actions and claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, the public policy of this state is not promoted by the making, presenting, or delivering of claims or settlement demands to insurers without all available and supporting documents, records, and information reasonably necessary and appropriate for an insurer to timely, fairly, and reasonably investigate and evaluate the claims or settlement demands; and

WHEREAS, both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to timely and fairly investigate and evaluate claims presented without the risk or exposure of having an unfair claim settlement practices or insurance bad faith claim asserted against the insurer or unreasonably creating additional liability exposure to the insurer beyond the limits of liability set forth

in the insurance policy; and

WHEREAS, this policy benefits the citizens of this state because it promotes fair, reasonable, and prompt settlements of claims, and reduces the nature, extent, and duration of costly litigation in the courts of this state, while allowing insurers a reasonable opportunity to investigate and evaluate claims and to reasonably and fairly settle claims to protect policyholders and claimants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Time-limited demands -- requirements -- insurer's fair and reasonable opportunity to investigate and evaluate claims.** (1) A time-limited demand from a claimant to an insurer offering to settle any claim must:

(a) reference this section;

(b) be in writing and labeled "time sensitive" at the top of the first page of the writing setting forth the required material terms of the offer to settle set forth in subsection (1)(d);

(c) be sent certified mail, return-receipt requested, to the insurer of the allegedly responsible party; and

(d) contain the following material terms:

(i) the name of the allegedly responsible party;

(ii) the time period within which the offer to settle shall remain open for acceptance by the allegedly responsible party's insurer, which may not be less than 60 days or the first business day following the 60th day when that day falls on a weekend or holiday;

(iii) the amount of the monetary payment requested to settle the claim, together with a description of any other form of consideration sought to settle the claim;

(iv) the date and location of the damage, loss, professional negligence, or breach of fiduciary duty;

(v) a reasonable description of the nature and extent of all known injuries, damages, and losses sustained by the claimant;

(vi) the party or parties to be released if the insurer accepts the time-limited demand;

(vii) a description of the claim or claims to be released if the time-limited demand is accepted; and

(viii) disclosure of eligibility, or information sufficient to verify eligibility, for medicare, medicaid, any other federal or state benefit program, and any other known liens or assignments granted by the claimant that apply to any of the damages claimed.

(2) The time period within which an insurer may accept a time-limited demand commences on the date the insurer actually receives the time-limited demand through certified mail.

(3) (a) A time-limited demand made pursuant to this section must be accompanied and supported by the following:

(i) all available and supporting documents, records, and information sufficient to allow the insurer a fair and reasonable opportunity to investigate and evaluate the nature and extent of the alleged responsible party's liability and the nature and extent of the claimant's injuries, damages, and losses;

(ii) medical records, invoices, and billing statements from all health care providers, if any, who provided treatment to or evaluated the claimant or decedent for:

(A) injuries suffered in connection with the claim from the date of injury until the date of the time-limited demand, including but not limited to emotional distress; and

(B) injuries, damages, losses, ailments, diseases, or other medical conditions occurring or existing prior to the date of injury that relate or may relate in any manner to any of the claimant's claims that are the subject of the written time-limited demand.

(b) If the claimant asserts a claim for loss of wages, earnings, compensation, or profits, however denominated, the claimant shall provide records from employers or other relevant sources or tax records to document the claimed loss.

(4) On receipt of a time-limited demand, the insurer has the right to provide a proposed settlement agreement or release, or both, or seek clarification or additional information regarding terms, liens, subrogation claims, alleged damages, standing to release claims, medical bills, medical records, preexisting medical conditions, and other relevant facts. The claimant has the duty to provide any missing or needed documents, records, and information reasonably requested by the insurer. A request for clarification or for additional documents, records, or information, or to propose a settlement agreement or release, or both, may not be

deemed a counteroffer or rejection of the time-limited demand to settle. On a request or proposal, any time limit imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days from and including the date of the request to the date of receipt of the information responding to the requestor, whether the terms of a settlement agreement, a release, or both, are accepted or rejected.

(5) If, during the time period within which a time-limited demand may be accepted, it is determined that a lien attaches to any settlement payment to be paid by the allegedly responsible party's insurer, including but not limited to any actual or potential medicare or medicaid lien, the claimant has a duty to cooperate with the insurer to ensure satisfaction of any valid lien interest medicare, medicaid, or other lienholder may have in the settlement payment. In addition, any time limit imposed within the time-limited demand must be stayed from date the valid lien is identified until the date on which the claimant, allegedly responsible party, and the insurer agree to address and resolve satisfaction of the valid lien.

(6) If an insurer with the right to settle on behalf of an insured receives a time-limited demand, the insurer may accept the time-limited demand by providing written acceptance of the material terms outlined in subsection (1) that is delivered or postmarked to the claimant within the time period set in the time-limited demand. The person or entity providing payment to satisfy the material terms may elect to provide payment by any one or more of the following means:

(a) cash;

(b) money order;

(c) wire transfer;

(d) a cashier's check issued by a bank or other financial institution;

(e) a draft or bank check issued by an insurer; or

(f) electronic funds transfer or other method of electronic payment.

(7) In any civil action commenced by or on behalf of a claimant, or by a claimant as an assignee of the allegedly responsible party, or by the allegedly responsible party for the benefit of the claimant:

(a) a time-limited demand that does not strictly comply with the terms of this section may not be considered as a reasonable opportunity to settle for the insurer and may not be admissible in any civil action alleging extracontractual damages against the allegedly responsible party's liability insurer; and

(b) ~~a claimant is not entitled to recover from the insurer as~~an insurer is not liable for any extracontractual damages arising from or related to any injuries, damages, or losses suffered by ~~the~~ a claimant that are not identified in the time-limited demand and supported by the documents, records, and information set forth in subsection (3).

(8) If an insurer receives a time-limited demand from a claimant that the insurer knows or reasonably believes is not represented by an attorney, and the insurer determines that the time-limited demand does not strictly comply with the requirements set forth in subsections (1) and (3), the insurer is obligated to notify the claimant of the requirements within 10 business days of receiving the time-limited demand from the claimant. On delivery of the notice to the claimant, any time limit imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days from and including the date on which the claimant presents a time-limited demand to the insurer that strictly complies with the requirements in subsections (4) and (5). If an insurer becomes obligated under this section to notify a claimant and fails to deliver the notice to the claimant, subsection (7) may not apply in any civil action alleging extracontractual damages against the insurer.

(9) For purposes of this section, the following definitions apply:

(a) "Allegedly responsible party" means any person or entity:

(i) claimed or alleged to have caused or contributed to cause property damage, personal injury, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty; or

(ii) claimed or alleged to have committed, engaged in, or be liable for professional negligence or breach of fiduciary duty.

(b) "Claimant" means:

(i) any injured party delivering a time-limited demand to an insurer, including but not necessarily limited to the injured party's attorney or any other authorized representative acting for or on behalf of the injured party;

(ii) any insured under an insurance policy pursuing a claim or cause of action arising from or related in any manner to the insurance policy issued by the insurer and delivering a time-limited demand to the insurer, including but not necessarily limited to the insured's attorney or any other authorized representative

acting for or on behalf of the insured; or

(iii) any assignee of an injured party or insured delivering a time-limited demand to the insurer, including but not necessarily limited to the assignee's attorney or any other authorized representative acting for or on behalf of the assignee.

(c) "Extracontractual damages" means any amount of damages caused by the allegedly responsible party that exceeds the total available policy limit of liability for all policies of liability insurance that an insurer has issued to an allegedly responsible party and which policies of liability insurance are applicable to a claim for property damage, personal injury, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty.

(d) "Insurer" means any insurer referred to or defined under 33-1-201 who has issued an insurance contract to an allegedly responsible party.

(e) "Time-limited demand" means any offer to settle any claim for personal injury, property damage, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty, in which the offer to settle:

(i) is made by or on behalf of a claimant or is made based on or arising out of any rights of a claimant;

(ii) is delivered in writing to an allegedly responsible party's insurer for purposes of offering to settle a claim against the allegedly responsible party within any insurance policy limit of liability; and

(iii) states by its terms that it can only be accepted within a specified period of time.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

- END -

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 244** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0244.001.001.

Signed: _____

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 244

INTRODUCED BY M. CUFFE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO MORTUARY SCIENCE LICENSING; REVISING INTERNSHIP REQUIREMENTS TO OBTAIN A LICENSE REQUIRED FOR THE PRACTICE OF MORTUARY SCIENCE; AMENDING SECTIONS 37-19-302 AND 37-19-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-19-302, MCA, is amended to read:

"**37-19-302. License required for practice of mortuary science -- qualifications of applicants.** (1) The practice of mortuary science is limited to:

(a) licensed morticians;

(b) licensed interns; and

(c) students exempted under 37-19-308.

(2) A person 18 years of age or older wishing to practice mortuary science in this state ~~must~~ shall apply to the board on the form and in the manner prescribed by the board.

(3) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) have graduated from an accredited college or university with an associate degree in mortuary science;

(c) pass an examination prescribed by the board and pay the application fee set by the board by rule; and

(d) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary. ~~The internship may be served prior to or after passing the examination provided for in subsection (3)(c).~~

(4) A person who fails the examination required in subsection (3)(c) may retake the examination

under conditions prescribed by rule of the board."

Section 2. Section 37-19-304, MCA, is amended to read:

"**37-19-304. Issuance of intern's license -- license fee -- issuance of mortician's license on completion of internship.** An applicant currently enrolled in or having already graduated from a program qualifying under 37-19-302(3)(b) ~~who passes the examination provided for in 37-19-302~~ shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana ~~and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license~~."

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2023.

- END -

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 263** (first reading copy – white) **Do Pass**.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 270** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0270.001.001.

Signed: _____

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 270

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING EMPLOYEE AND JOB APPLICANT RIGHTS TO LEGAL EXPRESSIONS OF FREE SPEECH, INCLUDING POSTS MADE ON SOCIAL MEDIA; PROVIDING THAT TERMINATION OF AN EMPLOYEE BASED ON THE EMPLOYEE'S LEGAL EXPRESSION OF FREE SPEECH, INCLUDING BUT NOT LIMITED TO STATEMENTS MADE ON SOCIAL MEDIA, IS DISCRIMINATION AND SUBJECT TO WRONGFUL DISCHARGE LAWS; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 39-2-307 AND 39-2-904, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-307, MCA, is amended to read:

"**39-2-307. Employer access limited regarding personal social media account of employee or job applicant -- conditions for exceptions -- employer retaliation prohibited -- penalties.** (1) Except as provided in subsection (2), an employer or employer's agent may not require or request an employee or an applicant for employment to:

(a) disclose a user name or password for the purpose of allowing the employer or employer's agent to access a personal social media account of the employee or job applicant;

(b) access personal social media in the presence of the employer or employer's agent; or

(c) divulge any personal social media or information contained on personal social media.

(2) An employee shall provide, if requested, to an employer or employer's agent the employee's user name or password to access personal social media when:

(a) (i) the employer has specific information about an activity by the employee that indicates work-related employee misconduct or criminal defamation, as provided in 45-8-212;

(ii) the employer has specific information about the unauthorized transfer by the employee of the employer's proprietary information, confidential information, trade secrets, or financial data to a personal online

account or personal online service; or

(iii) an employer is required to ensure compliance with applicable federal laws or federal regulatory requirements or with the rules of self-regulatory organizations as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)(26); and

(b) an investigation is under way and the information requested of the employee is necessary to make a factual determination in the investigation.

(3) Nothing in this section:

(a) limits an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement for an employee to disclose to the employer the employee's user name, password, or other information necessary to access employer-issued electronic devices, including but not limited to cell phones, computers, and tablet computers, or to access employer-provided software or e-mail accounts;

(b) prevents an employee from seeking injunctive relief in response to the provisions of subsection (2); or

(c) prevents the prosecution of a person for violating privacy in communications under 45-8-213.

(4) An employer may not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or job applicant for:

(a) not complying with a request or demand by the employer that violates this section; or

(b) legal expressions of free speech by the employee or job applicant, as protected in 39-2-904, made on personal social media.

(5) The provisions of subsection (4)(b) do not apply if the expression:

(a) by an employee or job applicant violates an employer's written policy; or

(b) violates the terms or conditions of the employee's employment contract.

~~(5)~~(6) (a) As used in this section, "personal social media" means a password-protected electronic service or account containing electronic content, including but not limited to e-mail, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, internet website profiles or locations, and online services or accounts, including password-protected services or accounts to which an employee may post

information, data, or pictures.

(b) The term does not include a social media account that is:

(i) opened for or provided by an educational institution and intended solely for educational purposes; or

(ii) opened for or provided by an employer and intended solely for business-related purposes.

~~(6)~~(7) (a) An employee or an applicant for employment may bring an action against an employer for violating this section within 1 year in a small claims court. An employee or an applicant for employment may also have a cause of action under 45-8-213.

(b) Damages are limited to $500 or actual damages up to the limit provided in 3-10-1004. Legal costs may be awarded to the party that prevails in court.

~~(7)~~(8) If an employer gains information improperly under this section and subsequently is involved in a computer security breach as provided in 30-14-1704, the employer is subject to penalties under 30-14-142."

Section 2. Section 39-2-904, MCA, is amended to read:

"**39-2-904. Elements of wrongful discharge.** (1) A discharge is wrongful only if:

(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; ~~or~~

(c) the employer materially violated an express provision of its own written personnel policy prior to the discharge, and the violation deprived the employee of a fair and reasonable opportunity to remain in a position of employment with the employer; or

(d) the employer terminated the employee solely based on the employee's legal expression of free speech, including but not limited to statements made on social media.

(2) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(3) The employer has the broadest discretion when making a decision to discharge any

BILL TABLED NOTICE

Senate (S) Business, Labor, and Economic Affairs

The Senate (S) Business, Labor, and Economic Affairs TABLED

SB223-Establish requirements for insurance coverage of clinician-administered drugs- Sen. Steve Fitzpatrick

by motion, on Friday February 10, 2023, (PLEASE USE THIS ACTION ~~DATE~~ IN LAWS BILL STATUS).

Daisy Rhodes
(For the Committee)

Pollello
(For the Secretary of the Senate)

12:00p / 2/10/23
(time) (date)

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 165

Sen. Noland made a Motion that SB0165.001.001 Be Amended
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 165

Sen. Curdy made a Motion that SB 165 Do Pass as Amended
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 178

Sen. Noland made a Motion that SB0178.001.002 Be Amended
YEAS – 8 NAYS - 2

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
Y	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 178

Sen. Noland made a Motion that SB 178 Do Pass as Amended
YEAS – 8 NAYS - 2

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
Y	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 211

Sen. Noland made a Motion that SB 211 Do Pass as Amended
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 216

Sen. Noland made a Motion that SB 216 Do Pass
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE PROXY

I, Senator Fitzpatrick, hereby authorize Senator Mark Nolan to vote my proxy before the Senate _____ meeting held on _____, 2023.

Senator Signature

1-10-23
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
Sb 0622.001.002	V	
Sb. 222	V	
Sb 0165.001.001 Amend	V	
Sb 165	V	
Sb 178.001.002 Amend	V	
Sb 178	V	
Sb 0211.001.001 Amend	V	
Sb 211	V	
Sb 223		V
Sb 223 Tabled	V	
Sb 236.001.01 Amend	V	
Sb 236	V	
Sb 0244.001.001 Amend	V	
Sb 244	V	
Sb 270.001.001 Amend	V	
Sb 270	V	
Sb 263	V	

SENATE PROXY

I, Senator Elsworth, hereby authorize Senator Mark Weland to vote my proxy before the Senate _____ meeting held on _____, 2023.

_____ _____

Senator Signature Date

Said authorization is as follows: *(mark only one)*

- ☑ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB 00 22.0610.002 Amend	✓	
SB 222	✓	
SB 0165.001.001 Amend	✓	
SB 165	✓	
SB 0178.001.002 Amd	✓	
SB 178	✓	
SB 0211.001.001 Amend	✓	
SB 211	✓	
SB 223		✓
SB 236.001.001 Amend	✓	
SB 236 0001.001	✓	
SB 216	✓	
SB 0244.001.001 Amend	✓	
SB 244	✓	
SB 270.001.01 Amend	✓	
SB 270	✓	
SB 263	✓	
SB 223 Tabled	✓	

SENATE PROXY

I, Senator Pope, hereby authorize Senator Willis Cundy to vote my proxy before the Senate Business, Labor & Economic Affairs meeting held on Feb 10, 2023.

Willis Cundy
Senator Signature

Feb 10, 2023
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB 270	X	
SB 263	X	
SB 223 Table	X	

SENATE PROXY

I, Senator Chris Pope, hereby authorize Senator Willis Curley to vote my proxy before the Senate Business, Labor & Economic Affairs meeting held on Feb 10, 2023.

Willis Curley
Senator Signature

Feb 10, 2023
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB0022.001.001 Amend	X	
SB22	X	
SB0165.001.001 Amend		X
~~SB0165.001~~		
SB0165		X
SB0178.001.002 Amend		X
SB178		X
SB0211.001.001 Amend	X	
SB211		X
SB216		X
SB223		X
SB236.001.001 Amend	X	
SB236	X	
SB0244.001.001 Amend	X	
SB244	X	
SB0270.001.001 Amend	X	

both

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/10/23

Bill No. SB243 **Sponsor(s)** SEN. REGIER

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Brandon Huber 2940 Bonita Ranger Station Rd Clinton MT	Self	✓		
Sarah Bauer 800 N. Benton Ave Helena	Self	✓		✓
Jacob Duwe 901 Pine Hollow Rd Stevensville, MT	Self	✓		
Rob Erickson 520 Ford Street MSO, MT	MAR		✓	
Mr Mrs Scott Bozeman MT	Self	✓		
Sam Sill	MAR		✓	
Donna Elfgard	Self	✓		
Greg Van Horssen	MAR		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/10/23

Bill No. SB263 **Sponsor(s)** SEN REGIER

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Tom Ebzery	MT Airport Mgrs	X		
Ian McKay	MT Airport Mgmt Assn	X		
Tim Conway	MDT			X
Ross Marty	MT Airport Mgmt Assn	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/10/23

Bill No. SB 264 **Sponsor(s)** Sen. REGIER

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Becky Schlauch	DOR-ABC			~
Tom Ebzery	MT Airport Mgrs.	X		
Ian McKay	MT Airport Mgrs Assn	X		
Tim Conway	MDT			X
Ross Marty	MT Airport Managers	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

BUS

Date

Date	Committee	H/S	Bill #	Position	Requester Name	Location	Affiliation
2/10/23	BUS	SB	243	Proponent	Constance Neumann	Kila, MT	N/A
2/10/2023	BUS	SB	243	Proponent	Jeff Laszloffy	Laurel, MT	Montana Family Foundation
2/10/2023	BUS	SB	243	Proponent	Lance Kinzer	Olathe, KS	1st amendment partnership
2/10/2023	BUS	SB	243	Opponent	Angelina Gonzalez-Aller	Bozeman, MT	Montana Human Rights Network
2/10/2023	BUS	SB	243	Opponent	Adrian Jawort	Billings, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Pari Kemmick	Billings, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Cherilyn DeVries	Kalispell, MT	Montana Human Rights Network/ Love Lives Here
2/10/2023	BUS	SB	243	Opponent	Andy Nelson	Missoula, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Ann Blair	Missoula, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Izzy Milch	Missoula, MT	Forward Montana

Additional Documents
SENATE: Business & Labor
Date: 2/10/23
Bill No. SB243

1st Amendment PARTNERSHIP
Faiths united for religious freedom

February 6, 2023

Chairman Jason Small
Senate Business, Labor, and Economic Affairs Committee
Montana State Capitol
Helena, Montana

SUBJECT: SB 243

Dear Chairman Small & Members of the Committee:

My name is Lance Kinzer, and I am the Policy Director for 1st Amendment Partnership where we are privileged to work with some of the nation's largest faith communities with respect to our common commitment to religious freedom. SB 243 offers a simple solution to a profound problem. For decades federal regulations, and the law in Montana and most other states, have prohibited religious discrimination in access to, as well as membership or participation in, a realty multiple-listing services (MLSs) or real estate brokers' organizations.[1] The National Association of Realtors (NAR) and its local affiliates are private organizations, and MLS's privately owned. But their unique role in relation to access to real estate markets has long been understood to make them appropriate subjects for reasonable legal constraints on polices that limit access.

This is particularly the case given the market power associated with the MLS. Indeed, while Courts have been divided on the subject, in 1991 the Eleventh Circuit Court of Appeals ruled that limiting MLS access to realtor association members violates federal anti-trust law. The case was remanded to allow the association to prove that there were legitimate pro-competitive justifications for restricted MLS access to association members.[2] But rather than litigating the case further, the association settled agreeing to provide MLS access to non-members. That resolution remains in effect in Alabama, Florida, and Georgia. A similar result was reached in state court in California, under that state's antitrust statute.[3] As a result of those judicial resolutions, in those 4 states MLS access cannot be limited to association members.

These existing regulatory, statutory and judicial constraints on relator association membership and/or MLS access all speak to the fact that government action in this area is not treading new ground. Rather, SB 243 is a natural extension of existing legal constraints designed to ensure reasonable access to realtor associations and MLSs.

SB 243 would make it clear that a realtor's lawful private, religious or moral beliefs and expression cannot be the basis of punitive action by a relator association. Prior to November of 2020, there was no need for such protection because the NAR appropriately limited its disciplinary rules to real estate related activities. That changed when the NAR amended its Code of Ethics (COE), noting that, "This revised policy expands applicability to all of a REALTOR®'s [SIC] activities."[4] Simultaneously, the NAR revised its definition of "public trust", thus heightening the potential

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[1] *See* Montana Statutes Annotated 49-2-305(8); 24 CFR § 100.90
[2] *Thompson v. Metropolitan Multilist*, 934 F. 2nd 1566 (11th Cir. 1991)
[3] *Marion County Board of Realtors v. Paisson*, 549 P.2d 833 (Cal. 1976); *Glendale Bd. Of Realtors v. Hounsell*, 139 Cal. Rptr. 830 (Cal. Ct. App. 1977); *People v. National Association of Realtors*, 174 Cal. Rpt. 728 (Cal. Ct. App. 1981).
[4] https://cdn.nar.realtor/sites/default/files/documents/Updated-Jan-2021-PSC-Approved-Recommendations-11-13-2020.pdf

punishment that may be imposed for speech and expression related violations of the NAR COE; placing them on par with misappropriation of client funds, willful discrimination, or fraud.[5] Under NAR's Disciplinary Guidelines a first offence involving speech or expression may now carry with it "a fine of $10,000 or less" as well as "termination of membership for up to three (3) years."[6] While such punishments are not mandatory, they are illustrative of what sanctions the NAR suggests may be appropriately imposed.

The NAR justified these changes as an effort to prevent harassing speech or hate speech directed toward a protected class. The NAR provides some guidance regarding the meaning of these terms, but ultimately instructs hearing panels that, "The terms "harassing speech," "hate speech," "epithets," and "slurs" can be commonly understood by use of a dictionary as well as other easily available references."[7]

The scope of the changes to the NAR COE, and the breadth of the potential conduct impacted by them, were causes for immediate concern among realtors who feared the NAR was seeking to weaponize its COE in a way that would allow them to punish speech and expression involving traditional religious and moral views regarding marriage, family and sexuality. As one Christian realtor put it in the aftermath of the 2020 COE change, "Though I am sure the changes made to the *COE* and *SPSP* on November 13th were intended to quell discrimination, I am concerned they will potentially *foster discrimination* against a particular group of Realtors. I believe these changes may put Christian Realtors in a position in which they must choose either to 1) remain silent in the public sphere about issues pertaining to sexual orientation and gender identity, or 2) share their historic Christian beliefs about these issues and risk being wrongfully accused of and reported for hate speech."

Events over the past year and a half in Montana have proven these concerns to be well founded. While others will provide greater detail on the specifics of the case, the story of bi-vocational pastor & realtor Brandon Huber and his discipline by The Missoula Organization of Realtors (an NAR affiliate), makes it plain that the new NAR COE is so expansive as to apply to the religious speech and expression of a Pastor in relation to the conduct of his own congregation. Pastor Huber's situation also shows the inadequacy of existing legal protections to address situations where the NAR chooses to punish lawful private speech unrelated to real estate or professional services as a realtor.

Numerous states across the country are watching Pastor Brandon's case, and this legislatures response, as they evaluate their own potential actions to protect the ability of realtors to practice their profession, even if they hold and express disfavored views on sensitive areas regarding marriage family and sexuality.

SB 243 is a narrowly crafted response to an increasingly pressing issues. It leaves the NAR and its affiliates free to regulate speech and expression as it sees fit, when that speech or expression occurs with respect to real estate related activates. It merely restores the pre-November 2020 reach of NAR COE speech restrictions. SB 243 does nothing to limit the range of protected classes the NAR COE can cover, nor the punishments that can be imposed. It merely states that whatever standards and punishment's it wishes to apply, cannot be exacted based upon a realtor's lawful and non-real-estate related speech or expression of their religious or moral beliefs. If not responded to, the NAR's limits of the expression of religious views it disagrees with will send a message to other professional associations that it is acceptable to exclude individuals from professional opportunities because of their religious expression. Montana can play an important role in stopping this in its tracks.

Sincerely,

Lance Kinzer
Directory Of Policy and Government Relations
First Amendment Partnership

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[5] Id.
[6] Id.
[7] Id.

Hello, my name is Karen Berg-DiGangi. I am a resident of Missoula and a proud member of the LGBTQ+ community. I am voicing my strong opposition to SB243.

This bill is focused on attacking the professional standards that Realtors - as members of the National Association of Realtors and it's local branches - are held accountable for.

The realtor code of ethics does not in any way inhibit one's religious freedom. Instead their focus, as first adopted in 1913 as one of the first codifications of ethical duties by any business group, is to encourage, promote and preserve every person's right to own, use, exchange and transfer real property. These ensure and enhance the professionalism and integrity of the real estate industry.

Any individual seeking assistance with real estate, should not have to vet and determine if the person they are working with feels ill will toward them. And they should feel safe in knowing that if they do feel discriminated against, they have a process and backing to safely report any issues. In business you will often work with those that have different beliefs than you. As a Realtor myself, I have worked with vegans despite being a hunter, worked with christians despite being agnostic and worked with conservatives despite being liberal. I know that every client I come across is worthy of my highest ability and work and in no way deserve discrimination for a difference in life or belief. Most importantly though, THEY know that they will receive that because of my title as a Realtor.

Discrimination of any kind, towards any person, should not be allowed in the real estate industry. Housing is a basic human right.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: Yes
Representation Org: Montana Human Rights Network/ Love Lives Here
Full Name: Cherilyn DeVries
Zoom Request: Yes
Zoom Type: Computer
City/State: Kalispell, MT

Dear Committee Members,

On behalf of the Montana Human Rights Network and our statewide membership, I urge you to vote no on SB 243, which is an attempt to override the ethical code of professional organizations.

As you review this bill, it is important to remember that it arose because a number of Montana Realtors recognized that very public actions by one of its members violated the ethics code of the Missoula Organization of Realtors (MOR). There is no widespread problem in need of correction. MOR says its code ensures that consumers are served by requiring REALTORS to cooperate with each other in furthering clients' best interests. The Code also states that the organizations Realtors are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS a common responsibility for its integrity and honor.

The Realtor in this situation didnt have a complaint filed against them due to an off-handed comment at their home or church. They were part of a very public multi-city tour that claimed that one of the speakers would expose the LGBTQ agenda that controls our lives and kills our liberty. That message was repeatedly published on the Realtors public Facebook page and on a discredited news blog managed by a former pastor who was found guilty of defamation for false comments published about a transgender Montanan.

Realtors know that discrimination is not only against the law, discrimination also harms the character of all Realtors and Montanas valued real estate industry. There is no reason to protect open discrimination toward LGBTQ+ Montanans or anyone in the state. Every resident has the right to have professional, ethical behavior followed when they purchase property through a Realtor, and professional organizations have the right to take corrective action when they see one of their members acting unethically.

Please vote no on SB 243.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Andy Nelson
Zoom Request: Yes
Zoom Type: Computer
City/State: Missoula, MT

Hello,

My name is Andy Nelson. I am a proud, life-long Montanan, originally from Culbertson and currently reside and work in Missoula. I am voicing my strong opposition toward SB 243. Actions face consequences and I know this bill is a way to keep individuals that publicly voice hateful rhetoric from facing consequences by their employer, in this case, those working in the real-estate industry. Claiming "religious freedom" as an excuse to voice hateful rhetoric toward a specific group of people goes against the moral and ethical standards of most organized institutions, companies and the real-estate industry. Living in this great country, we all have the right to free speech, however, that does not mean some speech does not have consequences, especially when one is held to a specific standard by their employer.

Frankly, this is bad for business. Period. Hate speech is bad for business. Discrimination is bad for business. For example, giving a real-estate agent protection to voice homophobic, transphobic or racist speech under the protection of religious freedom will only result in the loss of interested parties, me being one of them. As an out and proud 30 year old gay man who has lived in Montana his whole life and hopes to one day buy a home, there is absolutely no way I would seek a realtor or go through an association that sweeps hate speech from their employees under the rug. I grew up in a church. I know what discrimination feels like and how many use religion as their shield. That's not what Jesus taught and that is not what being a Christian is.

People are responsible for their actions and actions have consequences.

Sincerely,

Andy Nelson

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Ann Blair
Zoom Request: Yes
Zoom Type: Computer
City/State: Missoula, Mt

I cant think of a religion that promotes hating individuals or holding them away from the things in life that many of us take for granted. It is science that has shown us that gay people are born gay, with actual physical differences in their brainsits not a choice; its not a sin. Professional organizations have the right, and, I believe, an obligation to require of their members standards exceeding legal requirements that dictate our treatment of everyone in a professional and inclusive manner. When you are a voluntary member of an organization, professional or otherwise, you have agreed to conduct yourself in accordance with their principles. Dont want to do that? Dont be a member.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Riley Kurtz
Zoom Request: No
Zoom Type: N/A
City/State: Helena, MT

I dont believe this bill should try to legislate what the code of ethics for Realtors. I believe the Realtors Association should retain the right to decide what is professional or unprofessional conduct among ourselves.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: Yes
Representation Org: Zest Billings llc
Full Name: Marguerite
Zoom Request: No
Zoom Type: N/A
City/State: Billings mt

I oppose this bill. Private organizations should have the right to decide what is considered professional and acceptable conduct for their members. If an individual does not want to adhere to those standards, they should not be part of the organization. And saying that fearing for ones safety is a natural and acceptable consequence of being gay is beyond abhorrent.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Pari Kemmick
Zoom Request: Yes
Zoom Type: Computer
City/State: Billings, MT

Thank you for your time today. My name is Pari Kemmick (K-E-M-M-I-C-K) and I live in Billings, MT. I am testifying today in DEEP opposition to Senate Bill 243. I am honestly shocked that still, in 2023, we are debating whether hate speech should be tolerated. We have seen time and time again the harm that homophobic hate speech has on LGBTQ+ people all across this state. It is sickening to me that the legislators continuously introducing bills like this one are ok with sending a message to queer folks in Montana that not only are they not welcome here, but that it is ok to openly discriminate against them. That is not the Montana that I was born and raised in and it is certainly not the Montana of the future. Hate speech is not religious freedom, hate speech is harmful, violent and against who we are as Montanans. I cannot stress enough how dangerous and harmful legislation like this is. I once again urge you to vote no on Senate Bill 243 and spend your time addressing the real crises our state faces like affordable housing, public health and more.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Pari Kemmick
Zoom Request: Yes
Zoom Type: Computer
City/State: Billings, MT

Thank you for your time today. My name is Pari Kemmick and I live in Billings, MT. I am testifying today in DEEP opposition to Senate Bill 243. I am honestly shocked that still, in 2023, we are debating whether hate speech should be tolerated. We have seen time and time again the harm that homophobic hate speech has on LGBTQ+ people all across this state. It is frightening to me that the legislators continuously introducing bills like this one are ok with sending a message to queer folks in Montana that not only are they not welcome here, but that it is ok to openly discriminate against them. That is not the Montana that I was born and raised in and it is certainly not the Montana of the future. Hate speech is not religious freedom, hate speech is harmful, violent and against who we are as Montanans. I cannot stress enough how dangerous and harmful legislation like this is. I once again urge you to vote no on Senate Bill 243 and spend your time addressing the real crises our state faces and focus on issues that bring us together, not those that continue to divide us.

Additional Documents
SENATE: Business & Labor
Date: 2/10/23
Bill No. SB 263

Bill: SB-263
Committee: (S) Business, Labor, and Economic Affairs
Position: Proponent
Representation: Yes
Representation Org: Aircraft Owners and Pilots Association (AOPA)
Full Name: Brad Schuster
Zoom Request: No
Zoom Type: N/A
City/State: Kirkland, Washington

Fully support this legislation; see written testimony

601 Pennsylvania Ave NW, Suite 250
Washington, D.C. 20004

T. 202-509-9670
www.aopa.org

your freedom to *fly*

February 4, 2023

Senate Business, Labor, and Economics Affairs Committee
Montana State Legislature
State Capitol
PO Box 201706
Helena, MT 59620-1706

Re: SB 263 - An Act Revising Airport Authority Contracting Laws; Allowing Authorities to Enter into Certain Contracts, Leases, and Arrangements for 50 Years; and Amending Section 67-11-211

Chairman Small and Members of the Senate Business, Labor, and Economics Affairs Committee,

The Aircraft Owners & Pilots Association (AOPA) is the world's largest aviation membership organization representing the general aviation interests of hundreds of thousands of aircraft owners and pilots across the country, including almost 2,500 from the state of Montana. On behalf of these members, **AOPA supports Senate Bill 263, An Act Revising Airport Authority Contracting Laws; Allowing Authorities to Enter into Certain Contracts, Leases, And Arrangements For 50 Years; and Amending Section 67-11-211** of the Montana Code Annotated (MCA).

Senate Bill 263 proposes to amend Section 67-11-211 of the MCA entitled *"Granting of Operation and Use Privileges"* to allow an authority to *enter into contracts, leases, and other arrangements for terms not to exceed 50 years with any persons*, instead of the current forty (40) year limit. Providing authority to airports to allow land leases of up to fifty years would bring the state into better alignment with the Federal Aviation Administration Airport Compliance Manual (Order 5190.6b) which recommends lease maximums of not more than 50 years. Further, the regulatory constraints and costs associated with new airport development often disincentivizes would-be developers and lenders from supporting shorter term leases. Longer lease terms can be particularly helpful for Montana's general aviation airports where a more diverse range of revenue sources are often required to approach airport financial self-sustainment. Particularly given that airport sponsors sometimes assume ownership of structures at the conclusion of a lease, increasing the initial lease period will allow developers to better amortize expenses and vastly enhance the attractiveness of development opportunities.

For these reasons, **AOPA Supports Senate Bill 263**. Please consider AOPA as a resource on this topic and other matters related to general aviation. For questions or concerns, contact AOPA Northwest Mountain Regional Manager brad.schuster@aopa.org or by phone at 202-851-7502.

Sincerely,

Brad Schuster
Northwest Mountain Regional Manager, AOPA

Cc:
Administrator, Montana State Department of Transportation-Aeronautics Division
Montana Airport Management Association
Montana Pilots Association

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) BUSINESS AND LABOR

Call to Order: Chair Kerri Seekins-Crowe-R, on April 04, 2023 at 8:00 AM, in 172

ROLL CALL

Members Present:	Rep. Edward Buttrey, Chair (R) Rep. Derek Harvey, Vice Chair (D) Rep. Kerri Seekins-Crowe, Vice Chair (R) Rep. Fred Anderson (R) Rep. James Bergstrom (R) Rep. Bob Carter (D) Rep. Ross Fitzgerald (R) Rep. Steven Galloway (R) Rep. Steve Gist (R) Rep. Steve Gunderson (R) Rep. Jonathan Karlen (D) Rep. Jennifer Lynch (D) Rep. Ron Marshall (R) Rep. Eric Matthews (D) Rep. Nelly Nicol (R) Rep. Greg Oblander (R) Rep. Katie Zolnikov (R)
Members Excused:	Rep. Denley Loge (R) Rep. Katie Sullivan (D)
Staff Present:	Macy McCauley, Secretary Jameson Walker, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 236 03/28/2023
SB 269 03/28/2023
SB 340 03/21/2023
SB 370 03/21/2023
SB 165 03/29/2023

Executive Action:

HEARING ON SB 340 - Revise laws related to insurance coverage of insulin

Opening Statement:

08:01:42 Sen. Jason Small (R), SD 21, opened the hearing on SB 340, Revise laws related to insurance coverage of insulin.

Discussion:

08:01:44 Sen. Jason Small-R

Proponent Testimony:

08:02:29 Brad Griffin

08:02:40 Marcy Butcher

08:05:50 Adrienne Cotton

08:07:35 Tonya Fuhrmann

08:09:35 Stewart Doggett

08:10:04 Margret MacDonald

08:11:14 Dwane Preshinger

08:11:38 Stacy Anderson

08:12:56 Keegan Medrano

08:14:10 Alison Fralsonsharkey-Hines

08:16:41 Carissa Kemp

08:17:39 Gabe Blomquist

08:18:27 Julie O'Connor

Opponent Testimony:

None

Informational Witness Testimony:

08:20:17 John Doran

Questions from Committee:

08:20:40 Vice Chair Kerri Seekins-Crowe

08:23:56 Rep. Nelly Nicol

08:25:26 Rep. Greg Oblander

Closing Statement:

08:27:04 Sen. Jason Small (R), SD 21, closed the hearing on SB 340.

Discussion:

08:27:07 Sen. Jason Small-R

HEARING ON SB 370 - Generally revise uniform commercial code

Opening Statement:

08:30:42 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 370, Generally revise uniform commercial code.

Discussion:

08:30:45 Sen. Steve Fitzpatrick-R

Proponent Testimony:

08:34:16 Jacklyn Lunmarke

EXHIBIT(230404BUHa1)

EXHIBIT(230404BUHa2)

EXHIBIT(230404BUHa3)

EXHIBIT(230404BUHa4)

08:40:44 John Byington

EXHIBIT(230404BUHa5)

08:50:00 Aimee Grmjalez

08:52:21 Brad Griffin

08:53:14 Charles Robison

08:54:01 Karen Smith

Opponent Testimony:

08:54:55 Robin Mohs

08:56:18 Chris Martin

08:59:12 Darin Gaub

09:00:07 Rebecca Schwartz

09:02:40 Lant Barney

09:04:04 Donna Elford

09:05:15 Allana Lackey

09:07:42 Ed Redregan

09:08:19 Connie Ciabatoni

09:10:53 Matt Schwartz

09:12:54 Shelley Lustman

09:15:03 Cheryl Tusken

09:18:47 Jolene Crum

09:20:27 David Passieri

09:24:08 Diane Rice

09:25:30 Chelsea Culpon

09:26:50 Jo Vilhauer

Informational Witness Testimony:

None

Questions from Committee:

09:27:50 Rep. Steve Gist

09:31:37 Rep. Greg Oblander

09:36:17 Rep. Ron Marshall

09:38:36 Rep. Katie Sullivan

09:44:10 Rep. Steve Gist

09:49:03 Rep. Bob Carter

09:53:59 Rep. Greg Oblander

09:55:42 Chair Edward Buttrey

Closing Statement:

09:57:54 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 370.

Discussion:

09:57:58 Sen. Steve Fitzpatrick-R

HEARING ON SB 165 - Establishing a duty of cooperation relating to insurance policies

Opening Statement:

10:01:12 Sen. Barry Usher (R), SD 40, opened the hearing on SB 165, Establishing a duty of cooperation relating to insurance policies.

Discussion:

10:01:16 Sen. Barry Usher-R

Proponent Testimony:

10:03:43 Charles Robison

EXHIBIT(230404BUHa6)

10:05:35 Brad Dantic

EXHIBIT(230404BUHa7)

EXHIBIT(230404BUHa8)

10:11:51 Aimee Grmoljez

10:13:27 Bruce Spencer

10:15:19 Peter Strauss

10:16:08 John Iverson

10:17:05 Cary Hegreberg

10:18:13 Michael Marsh

10:19:22 Scott Tuxbury

Opponent Testimony:

10:21:35 Tim Hunt

10:26:18 Pat Fox

Informational Witness Testimony:

None

Questions from Committee:

10:33:08 Rep. Greg Oblander

10:38:54 Vice Chair Kerri Seekins-Crowe

10:44:30 Rep. Fred Anderson

10:44:36 Rep. Katie Sullivan

Closing Statement:

10:50:45 Sen. Barry Usher (R), SD 40, closed the hearing on SB 165.

Discussion:

10:50:48 Sen. Barry Usher-R

HEARING ON SB 236 - Establish time limited demand standards

Opening Statement:

10:53:20 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 236, Establish time limited demand standards.

Discussion:

10:53:23 Sen. Greg Hertz-R

Proponent Testimony:

10:55:18 Charles Robison

EXHIBIT(230404BUHa9)

10:56:47 Brad Dantic

10:59:04 Aimee Grmoljez

11:00:36 Bruce Spencer

11:01:35 John Iverson

11:01:59 Scott Tuxbury

Opponent Testimony:

11:03:56 Jim Hunt

11:09:12 Pat Fox

Informational Witness Testimony:

None

Questions from Committee:

11:12:23 Vice Chair Kerri Seekins-Crowe

11:13:50 Rep. Greg Oblander

11:19:01 Rep. Bob Carter

11:21:00 Rep. Katie Zolnikov

Closing Statement:

11:22:30 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 236.

Discussion:

11:22:35 Sen. Greg Hertz-R

HEARING ON SB 269 - Establish consumer protections and disclosures in litigation financing

Opening Statement:

11:23:47 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 269, Establish consumer protections and disclosures in litigation financing.

Discussion:

11:23:52 Sen. Greg Hertz-R

Proponent Testimony:

11:27:52 Charles Robison

EXHIBIT(230404BUHa10)

EXHIBIT(230404BUHa11)

11:31:29 Aimee Grmoljez

11:33:30 Bruce Spencer

11:36:24 David Bell

EXHIBIT(230404BUHa12)

EXHIBIT(230404BUHa13)

EXHIBIT(230404BUHa14)

11:41:12 Duane Williams

EXHIBIT(230404BUHa15)

11:42:15 Clay Eland

11:43:56 Dan Brooks

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

None

Closing Statement:

11:44:59 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 269.

Discussion:

11:45:03 Sen. Greg Hertz-R

ADJOURNMENT

Adjournment: 11:47:28

Macy McCauley, Secretary

Additional Documents:EXHIBIT(230404BUHaad)

EXHIBIT 6
DATE 4-4-25
HB SB165

SB165: Insurance Claims Cooperation

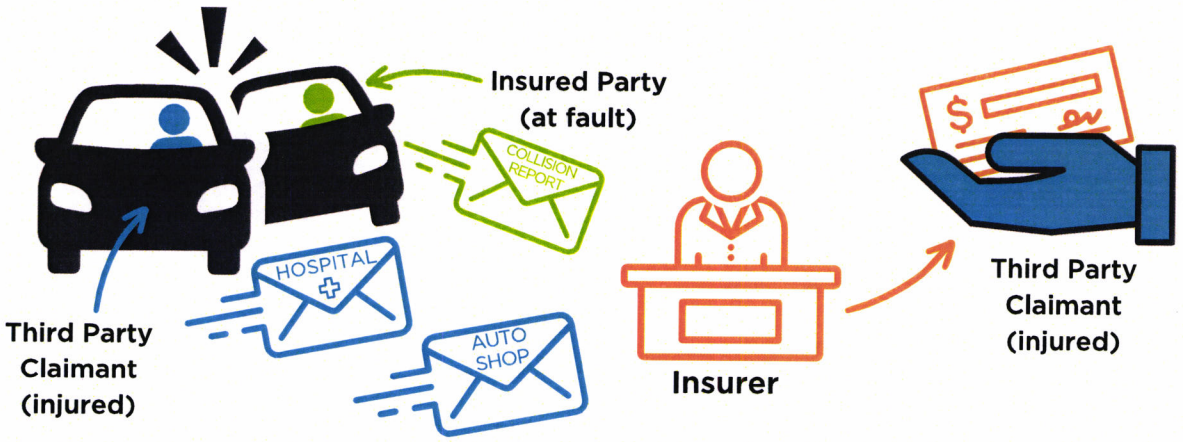
SB165 will enhance cooperation, reduce litigation, and eliminate the incentive to "set up" an insurance company for bad faith cause of action.

Duty to Cooperate

In current statute, there are no obligations for an injured claimant (the third party claimant) to cooperate with the insurance company as it adjusts the claim. SB165 would establish this affirmative duty to provide the insurance company with information necessary to investigate and evaluate an insurance claim. Insurance companies have statutory obligations to investigate claims timely and reasonably and to settle claims promptly where liability is reasonably clear. An insurance company's ability to fulfill its obligations is hindered by the failure or refusal of claimants to cooperate – this bill merely codifies a duty to cooperate by all parties.

Affirmative Defense

Since insurance companies have a statutory obligation investigate claims timely and reasonably, they may be subject to a bad faith claim if they delay. However, if the insured or third-party claimant refuse to cooperate, the insurance company is unable to meet the statutory duty without essential important information. Some lawyers may encourage their client to be uncooperative in order to set up a bad faith claim and extract more money from the insurer. SB165 allows an insurance company to raise the claimant's lack of cooperation in the company's defense.



Remove duplicative Common Law bad faith tort claim

MCA 33-18-242 currently provides a statutory remedy for a third-party claimant if an insurance company fails to settle claims promptly, fairly and equitably. SB 165 ends the duplicative court-created tort of common law bad faith for third-party claimants. No such claim exists for the insured party.

MONTANA CHAMBER OF COMMERCE | WE MEAN BUSINESS

EXHIBIT 7
DATE 4-4-23
HB SB 165

Montana Code Annotated 2021

TITLE 33. INSURANCE AND INSURANCE COMPANIES
CHAPTER 18. UNFAIR TRADE PRACTICES
Part 2. Insurer's Relations With Insured and Claimant

Unfair Claim Settlement Practices Prohibited

33-18-201. Unfair claim settlement practices prohibited. A person may not, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application that was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

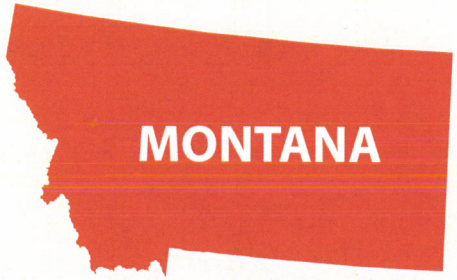
(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

EXHIBIT F8
DATE 4-4-23
HB SB 165

MONTANA

13% Higher than Average of Border States

15% Higher than Average of Border States

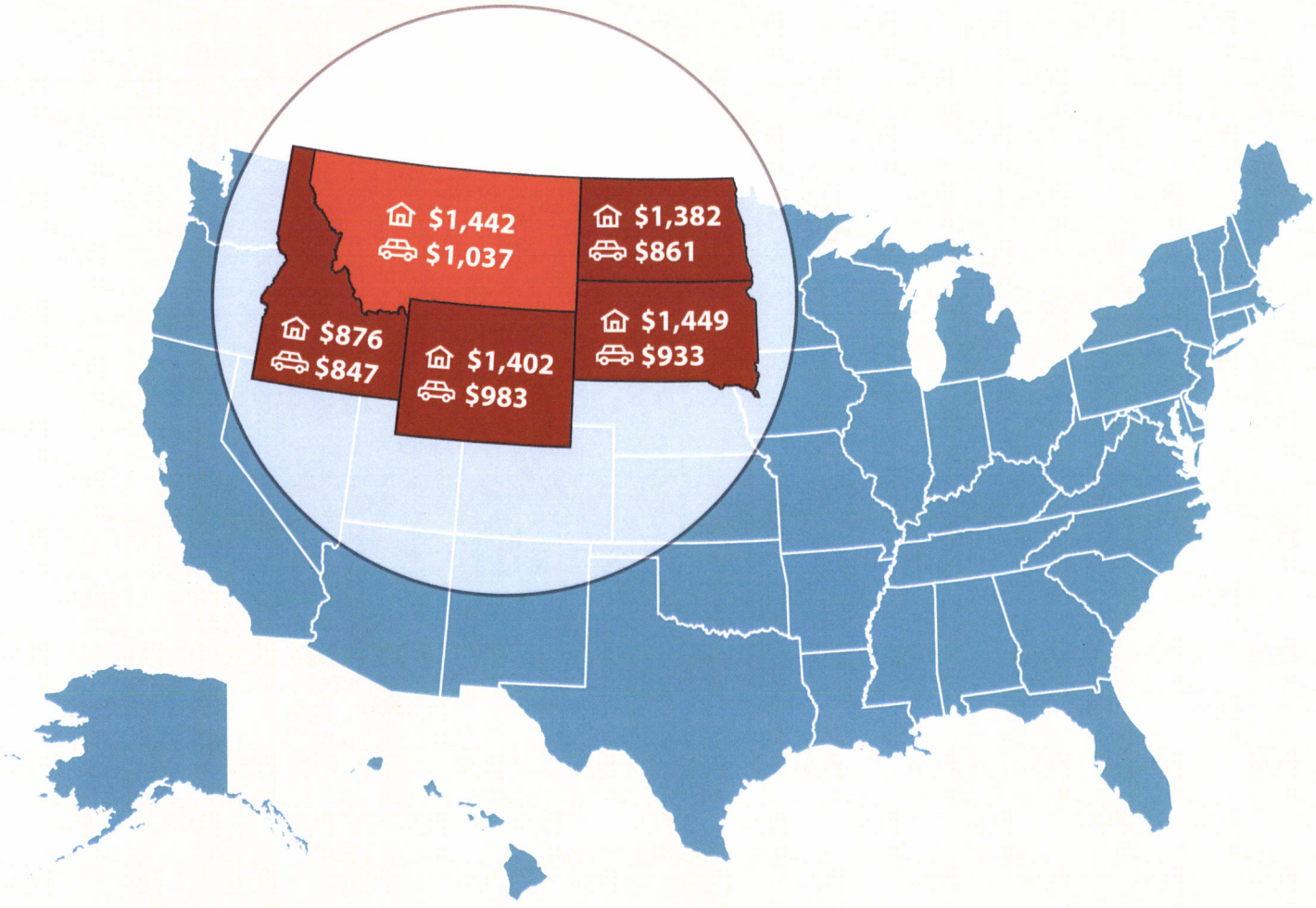


vs

65% Higher than Idaho

22% Higher than Idaho

Sources:
National Association of Insurance Commissioners - 2018/2019 Auto Insurance Database Report
National Association of Insurance Commissioners - Dwelling, Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report: Data for 2019



Sources:
National Association of Insurance Commissioners - 2018/2019 Auto Insurance Database Report
National Association of Insurance Commissioners - Dwelling, Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report: Data for 2019

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) BUSINESS AND LABOR

Call to Order: Chair Edward Buttrey-R, on April 05, 2023 at 8:00 AM, in 172

ROLL CALL

Members Present:	Rep. Edward Buttrey, Chair (R) Rep. Derek Harvey, Vice Chair (D) Rep. Kerri Seekins-Crowe, Vice Chair (R) Rep. Fred Anderson (R) Rep. James Bergstrom (R) Rep. Bob Carter (D) Rep. Ross Fitzgerald (R) Rep. Steven Galloway (R) Rep. Steve Gist (R) Rep. Steve Gunderson (R) Rep. Denley Loge (R) Rep. Jennifer Lynch (D) Rep. Ron Marshall (R) Rep. Eric Matthews (D) Rep. Nelly Nicol (R) Rep. Katie Sullivan (D)
Members Excused:	Rep. Jonathan Karlen (D) Rep. Greg Oblander (R) Rep. Katie Zolnikov (R)
Staff Present:	Macy McCauley, Secretary Jameson Walker, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 314 03/23/2023
SB 369 03/21/2023
SB 378 03/21/2023
SB 430 03/21/2023
SB 492 03/21/2023

Executive Action:

SB 165
SB 236
SB 262
SB 269
SB 310
SB 380
SB 451

HEARING ON SB 314 - Revise construction laws relating to bonds

Opening Statement:

08:02:16 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 314, Revise construction laws relating to bonds.

Discussion:

08:02:19 Sen. Steve Fitzpatrick-R

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:05:22 Rep. Steven Galloway

08:06:51 Chair Edward Buttrey

Closing Statement:

08:07:05 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 314.

Discussion:

08:07:09 Sen. Steve Fitzpatrick-R

HEARING ON SB 378 - Revise evidence laws

Opening Statement:

08:07:25 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 378, Revise evidence laws.

Discussion:

08:07:28 Sen. Steve Fitzpatrick-R

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:09:55 Rep. Steven Galloway

08:10:16 Chair Edward Buttrey

08:11:23 Rep. Denley Loge

08:11:57 Rep. Steve Gist

Closing Statement:

08:13:22 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 378.

Discussion:

08:13:25 Sen. Steve Fitzpatrick-R

HEARING ON SB 430 - Revise financial institution laws relating to bank boards

Opening Statement:

08:13:37 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 430, Revise financial institution laws relating to bank boards.

Discussion:

08:13:39 Sen. Steve Fitzpatrick-R

Proponent Testimony:

08:14:42 Melanie Hall

08:16:10 Aimee Grmoljez

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:17:32 Rep. James Bergstrom

Closing Statement:

08:18:35 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 430.

Discussion:

08:18:37 Sen. Steve Fitzpatrick-R

HEARING ON SB 492 - Revise insurance laws relating to the duty to defend

Opening Statement:

08:18:57 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 492, Revise insurance laws relating to the duty to defend.

Discussion:

08:18:58 Sen. Steve Fitzpatrick-R

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

08:23:27 Rep. Denley Loge

Closing Statement:

08:24:04 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 492.

Discussion:

08:24:07 Sen. Steve Fitzpatrick-R

HEARING ON SB 369 - Provide worker's comp coverage of injury caused by employer-mandated vaccine

Opening Statement:

08:24:20 Sen. Jeremy Trebas (R), SD 26, opened the hearing on SB 369, Provide worker's comp coverage of injury caused by employer-mandated vaccine.

Discussion:

08:24:23 Sen. Jeremy Trebas-R

Proponent Testimony:

None

Opponent Testimony:

08:28:19 Peter Strauss

08:32:12 Ethan Heverly

Questions from Committee:

08:34:17 Vice Chair Kerri Seekins-Crowe

08:34:25 Rep. Greg Oblander

08:34:36 Chair Edward Buttrey

08:37:36 Rep. Steve Gist

Informational Witness Testimony:

08:37:14 Bill Wheeler

Closing Statement:

08:39:18 Sen. Jeremy Trebas (R), SD 26, closed the hearing on SB 369.

Discussion:

08:39:23 Sen. Jeremy Trebas-R

EXECUTIVE ACTION ON SB 165 - Establishing a duty of cooperation relating to insurance policies

09:13:30 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 165 BE CONCURRED IN.**

09:13:30 **Vote:** Motion carried 18 - 1 by voice vote with Rep. Sullivan, voting no.

09:13:30 **Carrier Assigned:** Rep. Kerri Seekins-Crowe

EXECUTIVE ACTION ON SB 236 - Establish time limited demand standards

09:14:56 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 236 BE CONCURRED IN.**

09:14:56 **Vote:** Motion carried 18 - 1 by voice vote with Rep. Sullivan, voting no.

09:14:56 **Carrier Assigned:** Rep. Kerri Seekins-Crowe

EXECUTIVE ACTION ON SB 262 - Generally revise licensing requirements

09:15:55 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 262 BE CONCURRED IN.**

09:15:55 **Vote:** Motion carried 10 - 9 by roll call vote with Rep. Carter, Rep. Gunderson, Rep. Harvey, Rep. Karlen, Rep. Lynch, Rep. Marshall, Rep. Matthews, Rep. Nicol, Rep. Sullivan, voting no.

09:15:55 **Carrier Assigned:** Rep. Kerri Seekins-Crowe

EXECUTIVE ACTION ON SB 269 - Establish consumer protections and disclosures in litigation financing

09:17:47 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 269 BE CONCURRED IN.**

09:17:47 **Vote:** Motion carried unanimously by voice vote.

09:17:47 **Carrier Assigned:** Rep. Katie Zolnikov

EXECUTIVE ACTION ON SB 310 - Revise presumptive occupational disease laws

09:18:35 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 310 BE CONCURRED IN.**

Discussion:

09:18:55 Rep. Steve Gist

09:19:18 Chair Edward Buttrey

09:18:35 **Vote:** Motion carried unanimously by voice vote.

09:18:35 **Carrier Assigned:** Rep. Sue Vinton

EXECUTIVE ACTION ON SB 380 - Generally revise healthcare insurance laws

09:20:10 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 380 BE CONCURRED IN.**

09:20:19 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 380 BE AMENDED.**

Discussion:

09:20:39 Rep. Steven Galloway

09:20:19 **Vote:** Motion carried unanimously by voice vote.

09:21:06 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 380 BE CONCURRED IN AS AMENDED.**

09:21:06 **Vote:** Motion carried 18 - 1 by voice vote with Rep. Nicol, voting no.

09:21:06 **Carrier Assigned:** Rep. Jodee Etchart

EXECUTIVE ACTION ON SB 451 - Revise healthcare contract laws to prohibit certain restrictions

09:21:46 **Motion:** Rep. Kerri Seekins-Crowe moved that **SB 451 BE CONCURRED IN.**

09:21:46 **Vote:** Motion carried unanimously by voice vote.

09:21:46 **Carrier Assigned:** Rep. Jodee Etchart

ADJOURNMENT

Adjournment: 09:25:19

Macy McCauley, Secretary

Additional Documents:EXHIBIT(230405BUHaad)

Montana State Legislature

2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Business and Labor

Date: 04/05/2023 **Time:** 8:00 AM

Place: Capitol **Room:** 172

BILLS and RESOLUTIONS HEARD:

SB 314 Revise construction laws relating to bonds - Sen. Steve Fitzpatrick

SB 369 Provide worker's comp coverage of injury caused by employer-mandated vaccine - Sen. Jeremy Trebas

SB 378 Revise evidence laws - Sen. Steve Fitzpatrick

SB 430 Revise financial institution laws relating to bank boards - Sen. Steve Fitzpatrick

SB 492 Revise insurance laws relating to the duty to defend - Sen. Steve Fitzpatrick

EXECUTIVE ACTION TAKEN:

SB 165:

SB 165 Be Concurred In

SB 236:

SB 236 Be Concurred In

SB 262:

SB 262 Be Concurred In

SB 269:

SB 269 Be Concurred In

SB 310:

SB 310 Be Concurred In

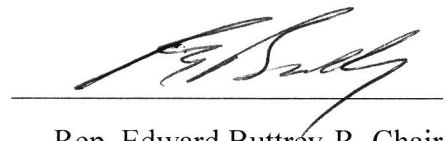
SB 380:

SB 380 Be Concurred In as Amended

SB 451:

SB 451 Be Concurred In

Comments:



Rep. Edward Buttrey-R, Chair

House

Roll Call

(H) Business and Labor

DATE: 04/05/2023
TIME: 8:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Seekins-Crowe, Kerri	X	
Harvey, Derek	X	
Anderson, Fred	X	
Bergstrom, James	X	
Carter, Bob	X	
Fitzgerald, Ross	X	
Galloway, Steven	X	
Gist, Steve	X	
Gunderson, Steve	X	
Karlen, Jonathan		X
Loge, Denley	X	
Lynch, Jennifer	X	
Marshall, Ron	X	
Matthews, Eric	X	
Nicol, Nelly	X	
Oblander, Greg		X
Sullivan, Katie	X	
Zolnikov, Katie		X
Buttrey, Edward	X	

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 165

Rep. Seekins-Crowe made a Motion that SB 165 Be Concurred In
YEAS – 18 NAYS - 1

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
N	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 236

Rep. Seekins-Crowe made a Motion that SB 236 Be Concurred In
YEAS – 18 NAYS - 1

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
N	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 262

Rep. Seekins-Crowe made a Motion that SB 262 Be Concurred In
YEAS – 10 NAYS - 9

Y	Seekins-Crowe, Kerri
N	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
N	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
N	Gunderson, Steve
N	Karlen, Jonathan
Y	Loge, Denley
N	Lynch, Jennifer
N	Marshall, Ron
N	Matthews, Eric
N	Nicol, Nelly
Y	Oblander, Greg; by proxy
N	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 269

Rep. Seekins-Crowe made a Motion that SB 269 Be Concurred In
YEAS – 19 NAYS - 0

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
Y	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 310

Rep. Seekins-Crowe made a Motion that SB 310 Be Concurred In
YEAS – 19 NAYS - 0

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
Y	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 380

Rep. Seekins-Crowe made a Motion that SB0380.002.003 Be Amended
YEAS – 19 NAYS - 0

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
Y	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 380

Rep. Seekins-Crowe made a Motion that SB 380 Be Concurred In as Amended
YEAS – 18 NAYS - 1

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
N	Nicol, Nelly
Y	Oblander, Greg; by proxy
Y	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 380

Rep. Seekins-Crowe made a Motion that SB0380.002.003 Be Amended
YEAS – 19 NAYS - 0

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
Y	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

HOUSE COMMITTEE ON (H) BUSINESS AND LABOR
April 05, 2023
VOTE TABULATION - SB 380

Rep. Seekins-Crowe made a Motion that SB0380.002.003 Be Amended
YEAS – 19 NAYS - 0

Y	Seekins-Crowe, Kerri
Y	Harvey, Derek
Y	Anderson, Fred
Y	Bergstrom, James
Y	Carter, Bob
Y	Fitzgerald, Ross
Y	Galloway, Steven
Y	Gist, Steve
Y	Gunderson, Steve
Y	Karlen, Jonathan
Y	Loge, Denley
Y	Lynch, Jennifer
Y	Marshall, Ron
Y	Matthews, Eric
Y	Nicol, Nelly
Y	Oblander, Greg; by proxy
Y	Sullivan, Katie
Y	Zolnikov, Katie
Y	Buttrey, Edward

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 380** (first reading copy – white) **Be Concurred In as Amended**. The referenced amendment is SB0380.002.003.

Carrier: Rep. Etchart

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 18, No 1

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 262** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Seekins-Crowe

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 10, No 9

SB262
4/5

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 236** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Seekins-Crowe

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 18, No 1

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 165** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Seekins-Crowe

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 18, No 1

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 451** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Etchart

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 19, No 0

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 310** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Vinton

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 19, No 0

House Standing Committee Report

April 05, 2023

To the Speaker,

We, your committee on **(H) Business and Labor** recommend that **Senate Bill 269** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Zolnikov

Signed: _____

Rep. Edward Buttrey-R, Chair

-End-

Committee Vote:

Yes 19, No 0

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Business & Labor Committee.

I desire to leave my proxy vote with Rep. Seekins-Crowe.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 165		✓	
SB 236		✓	
SB 262		✓	
SB 269		✓	
SB 310		✓	
SB 380	Amendment	✓	
SB 380		✓	
SB 451		✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. [signature] Greg Oberlander April 5, 2023

(Signature) (Print Name) (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

BUSINESS & LABOR COMMITTEE

DATE 4-5-23 BILL NO: SB 369

SPONSOR(S): Sen. Trebas

SHORT TITLE: Worker's comp coverage

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Peter Strauss	MT Self-Insurers Assoc	X		
Bill Wheeler	DLI			X
Cathleen Healy	MSBA		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

DATE 4-5-23 BILL NO: SB 492

SPONSOR(S): Sen. Fitzpatrick

SHORT TITLE: Revise Insurance laws

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

DATE 4-5-23 BILL NO: SB 430

SPONSOR(S): Sen. Fitzpatrick

SHORT TITLE: Revise financial laws

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Aimé Grmoljez	MT Bankers Assoc	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

DATE 4-5-23 BILL NO: SB 378

SPONSOR(S): Sen. Fitzpatrick

SHORT TITLE: Revise evidence laws

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

BUSINESS & LABOR COMMITTEE

DATE 4-5-23 BILL NO: SB 314

SPONSOR(S): Sen. Fitzpatrick

SHORT TITLE: Reuse Construction laws

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

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AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Insured and third-party claimant's duties -- affirmative defense. (1) An insured or a third-party claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against the insured, the insurer, or both, or reported to the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a third-party claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported to the insurer.

(3) A breach of any of the duties of an insured or a third-party claimant set forth in this section does not create a separate or independent cause of action by an insurer against an insured or a third-party claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or a third-party claimant under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5), or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence in a civil action regarding the actions, inactions, and other conduct of an insured or a third-party claimant in a civil action commenced by an insured or a third-party claimant with respect to a claim or cause of action under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5), or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or a third-party claimant and that relates to, establishes, proves, or may tend to establish or prove:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

(b) "Insured" means an individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an individual or entity making, alleging, or pursuing a claim or cause of action for which coverage may be provided by the insurance policy issued by the insurer to the individual or entity.

(c) "Third-party claimant" means a third party making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242. For purposes of this definition, the term also means an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of the third-party claimant.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may

bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

SB 165, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2023.

_____

Speaker of the House

Signed this _____day

of_____, 2023.

SENATE BILL NO. 165

INTRODUCED BY B. USHER

AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.